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Civil Procedure - Splitting Cause of Action - Voluntary Settlement of Part of Cause of Action as Bar to Suit

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CIVIL PROCEDURE—SPLITTING CAUSE OF ACTION—VOLUNTARY SETTLEMENT OF PART OF CAUSE OF ACTION AS BAR TO SUIT—Plaintiff suffered bodily injury and damage to his automobile from a single negligent act of defendant. By voluntary agreement the parties settled plaintiff's claim as to the property damage only. Thereafter plaintiff instituted this action to recover damages for his personal injuries. Defendant pleaded the property settlement as a bar to the action, and the trial court awarded judgment to defendant. The intermediate appellate court affirmed. On appeal to the state supreme court, *held,* affirmed. A single wrongful act which inflicts personal injury and property damage gives rise to one cause of action, and a prior judgment for the property claim or a voluntary settlement thereof will, when pleaded, bar an action for the personal injuries. *Gregory v. Schnurstein,* 212 Ga. 497, 93 S.E. (2d) 680 (1956).

The court in the principal case indicates that it recognizes the rule of the majority of American courts that a cause of action consists of the wrongful act of defendant rather than the effect thereof, so that one wrongful act gives rise to one cause of action although plaintiff suffered both personal and property injuries.[1] Plaintiff may bring, therefore, only one suit for his injuries. If he sues for his property damages, his entire cause of action is merged in the judgment, and he may not subsequently recover in an ac-

[1] King v. Chicago M. & St. P. R. Co., 80 Minn. 83, 82 N.W. 113 (1900); Mobile & O. R. Co. v. Matthews, 115 Tenn. 172, 91 S.W. 194 (1905); Georgia Ry. & Power Co. v. Endsley, 167 Ga. 439, 145 S.E. 851 (1928); Underwood v. Dooley, 197 N.C. 100, 147 S.E. 686 (1929). *Contra,* e.g., Brunsden v. Humphrey, 14 Q.B. 141 (1884). See 64 A.L.R. 663 at 667 (1929) for a discussion of the rule that a cause of action consists of the effect of defendant's act on plaintiff.

tion for the personal injuries.[2] The court in the principal case erroneously concludes, however, that the same rule should be applied when there is a voluntary settlement of part of plaintiff's claim, i.e., that his cause of action is merged in the voluntary settlement of the property damages, and an action for the personal injuries is thereby barred.[3] This result indicates a failure on the part of the court to appreciate the reason underlying the rule which precludes splitting a cause of action. To allow plaintiff two recoveries on the same cause of action subjects defendant to a multiplicity of suits,[4] and it is contrary to the public interest to extend litigation which might be concluded conveniently in one judicial proceeding.[5] A voluntary settlement of part of a cause of action, however, followed by an action on the remainder subjects defendant to only one suit on the cause of action. The United States Supreme Court has held that merger of a cause of action in a judgment for part of a claim applies only to the part settled thereby, and will not bar a subsequent suit for the remainder of the claim if the parties have agreed that the prior judgment settles only part of the cause of action.[6] If the parties may agree that two suits shall be maintained on one cause of action, an agreement such as that in the case at bar which results in extrajudicial settlement of part of the controversy should not necessarily preclude a single suit on the cause of action. The latter agreement is even more desirable than the former, for its effect is to settle the controversy in one action, whereas two actions are necessary in the former situation. There are few cases dealing directly with the problem of an action for personal injuries brought subsequent to a voluntary settlement of property damages resulting from the same wrong of defendant.[7] These opinions generally recognize that the reason for the rule against splitting a cause of action into two judicial actions does not warrant an application of the rule when the first settlement is by voluntary agreement rather than by court judgment,[8] and state that settlement of part of a cause of action is to be encouraged since it expedites litigation by eliminating some of the controversy between

2 See 64 A.L.R. 663 (1929) and 127 A.L.R 1081 (1940) for a comprehensive list of cases invoking the rule against splitting a cause of action.

3 Principal case at 682.

4 Emry v. Chappell, 148 N.C. 327, 62 S.E. 411 (1908); 77 UNIV. PA. L. REV. 688 (1929).

5 Frankel v. Quaker City Cab Co., 82 Pa. Super. 217 (1923); 77 UNIV. PA. L. REV. 688 (1929).

6 Industrial Commission of Wisconsin v. McCartin, 330 U.S. 662 (1947).

7 Cases in accord with the principal case where settlement was understood to be of only part of the cause of action: Western & A. R. Co. v. Atkins, 141 Ga. 743, 82 S.E. 139 (1914); Bennett v. Dove, 93 Ga. App. 57, 90 S.E. (2d) 601 (1955); Giles v. Smith, 80 Ga. App. 540, 56 S.E. (2d) 860 (1949). *Contra:* Bliss v. N. Y. C. & H. R. Co., 160 Mass. 447, 36 N.E. 65 (1894); Frankel v. Quaker City Cab Co., note 5 supra; Bennett v. Bell, 176 Ark. 690, 3 S.W. (2d) 996 (1928). See also Reeves v. Phila. Gas Works, 107 Pa. Super. 422 (1933).

8 See cases contra to principal case, note 7 supra. See also O'Bierne v. Lloyd, 43 N.Y. 248 (1870), which states that a voluntary compromise of a part of a contract claim does not preclude an action for that part of the claim omitted from the settlement when the parties have made a valid agreement to sever the demand and settle part of it.

the parties.[9] Those decisions which follow the rule of the principal case, all of which are from Georgia courts, do so either without explanation of their position or on the erroneous assumption that there is no distinction between a voluntary settlement of part of a cause of action followed by suit on the remainder and two suits on the same cause of action.[10] Clearly the result in those cases disregards the reason for the rule against splitting a cause of action, and is detrimental to the desirable policy of simplifying litigation by the elimination of issues that can be voluntarily settled.

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[9] Frankel v. Quaker City Cab Co., note 5 supra.

[10] Western & A. R. Co. v. Atkins, note 7 supra; Giles v. Smith, note 7 supra; Bennett v. Dove, note 7 supra.