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FEDERAL PROCEDURE-JOINDER OF LEGAL AND EQUITABLE CLAIMS-TRIAL BY JURY

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FEDERAL PROCEDURE—JOINDER OF LEGAL AND EQUITABLE CLAIMS—TRIAL BY JURY—Plaintiff brought an action against his employer in a federal district court under the Federal Employers' Liability Act for damages for personal injuries suffered during the course of his employment. In the same action, plaintiff sought to have a release, which he had executed, set aside on the ground that it had been obtained by defendant's fraud. Plaintiff requested a jury trial of both claims; defendant objected to a jury trial of the issue of setting aside the release, on the ground that a claim for cancellation of a release is for equitable relief triable to the court alone. *Held,* objection overruled. Both issues will be tried to a jury in order to avoid two trials. *Thorla v. Louisiana Midland Railway Co.,* (D.C. La. 1950) 90 F. Supp. 553.

For the purposes of joinder under the Federal Rules of Civil Procedure[1] the distinction between legal and equitable claims has been abolished,[2] and in the interest of securing a "just, speedy and inexpensive determination of every action"[3] a plaintiff is permitted to join all legal and equitable claims which can conveniently be disposed of in one trial.[4] Consonant with this aim, it was early recognized that a plaintiff who joins legal and equitable claims in order to dispose of them conveniently in one suit should not be held to have forfeited his right to trial by jury of the legal claims,[5] unless they are merely "incidental"

[1] Rules of Procedure for the District Courts of the United States, 28 U.S.C. (1946) following §723c.

[2] "There shall be one form of action to be known as 'civil action.'" Id., Rule 2.

[3] Id., Rule 1.

[4] "The plaintiff in his complaint . . . may join . . . as many claims either legal or equitable or both as he may have against an opposing party." Id., Rule 18(a).

[5] Ransom v. Staso Milling Co., (D.C. Vt. 1941) 2 F.R.D. 128; Dellefield v. Blockdel Realty Co., (D.C. N.Y. 1941) 1 F.R.D. 689; Bruckman v. Hollzer, (9th Cir. 1946) 152 F. (2d) 730; Ring v. Spina, (2d Cir. 1948) 166 F. (2d) 546; 3-A OHLINGER'S FEDERAL PRACTICE 10 (1948). The courts of a few states, notably New York, have reached the opposite result, on the ground that the legal action is "merged" into the equitable action by

to the equitable relief sought.[6] However, it has frequently been stated that the Federal Rules were not intended to extend the right of trial by jury beyond the right guaranteed by the Seventh Amendment[7] or specifically given by statute.[8] Therefore, it would seem clear that a plaintiff should not be able to secure a right to jury trial of equitable claims merely by joining them with legal claims.[9] However, that seems to have been accomplished by the plaintiff in the principal case. His complaint stated two claims: (1) a legal claim for damages caused by defendant's negligence, and (2) cancellation of a release induced by defendant's fraud, traditionally a claim cognizable only in equity.[10] The court, while apparently conceding the equitable nature of the latter claim, permitted both questions to go to the jury in preference to "trying this civil action in a piecemeal fashion."[11] Whether the decision really promoted trial convenience may be questioned. Normally when legal and equitable issues are joined, the equitable issue is tried first to the court, making further proceedings unnecessary if the decision is in favor of the defendant.[12] The decision to try both issues to the jury foreclosed this possibility, making trial of the legal issue necessary, even though the defendant might prevail on the equitable issue. Furthermore, the trial of both questions simultaneously seems to result in no appreciable saving,

plaintiff's voluntary joinder. Cogswell v. New York, New Haven & Hartford Railroad Co., 105 N.Y. 319, 11 N.E. 518 (1887); Di Menna v. Cooper & Evans Co., 220 N.Y. 391, 115 N.E. 993 (1917).

[6] In such a case the theory is that a court of equity, once having taken cognizance of a suit, will retain jurisdiction in order to give complete relief. Missouri Pacific Transportation Co. v. George, (8th Cir. 1940) 114 F. (2d) 757; Bellavance v. Plasti-Craft Novelty Co., (D.C. Mass. 1939) 30 F. Supp. 37; Williams v. Collier, (D.C. Pa. 1940) 32 F. Supp. 321; Fraser v. Geist, (D.C. Pa. 1940) 1 F.R.D. 267.

[7] "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. . . ." U.S. CONST., Amend. VII.

[8] The Act of June 19, 1934, 48 Stat. L. 1064 (1934), 28 U.S.C. (1946) §723c, authorizing the Federal Rules, provided that "the right of trial by jury as at common law and declared by the Seventh Amendment to the Constitution shall be preserved to the parties inviolate." Pursuant to that provision, Rule 38 states, "The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate." See Bellavance v. Plasti-Craft Novelty Co., supra note 6; 3 MOORE'S FEDERAL PRACTICE 3004 (1938); Morris, "Jury Trial Under the Federal Fusion of Law and Equity," 20 TEX. L. REV. 427 (1942).

[9] This is true unless the equitable issue can be considered merely "incidental," as where plaintiff seeks damages for wrongs already committed as a primary claim, but also adds a secondary claim for injunction against further injury. Ransom v. Staso Milling Co., supra note 5; United States Process Corp. v. Fort Pitt Brewing Co., (D.C. Pa. 1939) 29 F. Supp. 37.

[10] In re Atwater, (2d Cir. 1920) 266 F. 278; aff'd. 254 U.S. 423, 41 S.Ct. 150 (1921); Great Northern Ry. Co. v. Fowler, (9th Cir. 1905) 136 F. 118; Cavender v. Virginia Bridge & Iron Co., (D.C. Ga. 1919) 257 F. 877; 2 BLACK, RESCISSION AND CANCELLATION 1027 (1929). See also Radio Corporation of America v. Raytheon Manufacturing Co., 296 U.S. 459, 56 S.Ct. 297 (1935).

[11] Principal case at 554. Rule 42 of the Federal Rules gives trial judges broad discretionary powers in consolidating and separating issues for trial.

[12] Hartford-Empire Co. v. Glenshaw Glass Co., (D.C. Pa. 1943) 3 F.R.D. 50; Cohen v. Globe Indemnity Co., (D.C. Pa. 1940) 37 F. Supp. 208; Frissell v. Rateau Drug Stores, Inc., (D.C. La. 1939) 28 F. Supp. 816.

since there were no questions of law or fact common to both issues. Aside from trial convenience, however, the result may be justified under the particular facts of the case. Under present federal practice the validity of a release would have been a jury question if the release had been pleaded by the defendant,[13] and it might be said that plaintiff's prayer asking for cancellation of the release was no more than an anticipation of a defense. However, the case is chiefly significant in illustrating the role which the free joinder and consolidation provisions of the Federal Rules may be playing in the gradual disintegration of the barrier between law and equity. To judges faced with crowded dockets, the opportunity to expedite trials by trying all issues simultaneously may serve as a powerful incentive to resolve all doubts as to the nature of an issue in favor of uniformity; and when one of the joined issues is clearly legal, the impetus is likely to be toward construing all others the same way, as was done in the principal case. To the practitioner this liberal joinder means added possibilities of securing jury trial of issues such as fraud, innocent misrepresentation,[14] and mistake,[15] which have traditionally been considered equitable in the federal courts, but which are gradually being absorbed as legal issues in the state courts, when such issues can be colored by conjoined legal issues.

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[13] Callen v. Pennsylvania Railroad Co., (3d Cir. 1947) 162 F. (2d) 832, affd. 332 U.S. 625, 68 S.Ct. 296 (1948); Southwestern Greyhound Lines, Inc. v. Buchanan, (5th Cir. 1942) 126 F. (2d) 179; Wagner v. National Life Insurance Co., (6th Cir. 1898) 90 F. 395. The earlier federal rule was that fraud in the inducement of a release was purely an equitable issue, even if pleaded defensively. Union Pacific Railroad Co. v. Syas, (8th Cir. 1917) 246 F. 561; Hoad v. New York Central Railroad Co., (D.C. N.Y. 1933) 3 F. Supp. 1020; Pringle v. Storrow, (D.C. Mass. 1925) 9 F. (2d) 464.

[14] Compare New York Life Insurance Co. v. Marotta, (3d Cir. 1932) 57 F. (2d) 1038, with Haebler v. Crawford, 258 N.Y. 130, 179 N.E. 319 (1932); Henry v. Kopf, 104 Conn. 73, 131 A. 412 (1925); Smith v. Columbus Buggy Co., 40 Utah 580, 123 P. 580 (1912).

[15] Compare Metropolitan Life Insurance Co. v. Schneider, (D.C. N.J. 1940) 34 F. Supp. 220, with Dahlhjelm Garages v. Mercantile Insurance Co., 149 Wash. 184, 270 P. 434 (1928); Lunn & Sweet Co. v. Wolfman, 256 Mass. 436, 152 N.E. 893 (1926); Central Granaries Co. v. Nebraska Lumbermen's Mutual Insurance Assn., 106 Neb. 80, 182 N.W. 582 (1921).