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Actions - Splitting Causes of Action - Rule against Splitting Causes of Action Not Applicable Where Party Is Unaware of Full Rights at Time of Primary Action

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RECENT CASES

ACTIONS — SPLITTING CAUSES OF ACTION — RULE AGAINST SPLITTING CAUSES OF ACTION NOT APPLICABLE WHERE PARTY IS UNAWARE OF FULL RIGHTS AT TIME OF PRIMARY ACTION — Plaintiff assigned her one-half interest in certain mineral leases to a partnership which assigned them in turn to defendant corporation. Thereafter the corporation refused to pay plaintiff an agreed royalty from a subsequently-acquired lease. Plaintiff sued to recover the agreed royalty and was denied recovery on the ground that her husband had not joined in the original assignment of the mineral leases.[1] Plaintiff then brought a second action against the corporation on the theory that if the assignment had been void she remained the owner of a half-interest in the leases. The defendant contended this claim should have been set up in the first suit and moved to dismiss the action. The court *held*, that the motion should be denied. Since plaintiff had been unaware of the invalidity of the assignment the rule against splitting causes of action was not applicable. *Dempsey v. D. B. & M. Oil and Gas Co.*, 112 F. Supp. 408 (E.D. Ky. 1953).

Essentially the rule against splitting a cause of action states that a single cause of action or entire claim or demand cannot be split up or divided so as to be made the subject of different actions.[2] With this in mind we must consider what a cause of action is.[3] Taking a layman's point of view, so as to avoid vague and mired philosophical possibilities, a cause of action can be defined simply as those matters of fact out of which a party's right to relief arises.[4] When these matters of fact are divided, and another action is brought on part of the facts, the first action becomes res judicata to the second.[5] The object, of course, is to prevent a multiplicity of suits and compel a party to litigate an entire demand in a single action.[6] Notable exceptions have been advanced which restrict the application of the rule,[7] for instance, the rule will not be applied where the plaintiff was unaware of the true amount of his damages, whether through mistake,[8] ignorance,[9] or fraud,[10] unless the un-

1. Ky. Stat. §506, 2128, 2129 (1930).

2. Kendall v. Stokes, 3 How. 87 (U.S. 1845); John Miller Co. v. Harvey Mercantile Co., 45 N. D. 503, 178 N.W. 802 (1920); Silber v. James Drug Stores, Inc., 124 N.J.L. 401, 11 A.2d 756. (1940); Stoops v. Stoops, 256 S.W.2d 799. (Mo., 1953).

3. "If we were to define what is, under the decisions of the courts, a cause of action, . . . we would face a task which would defy all our efforts. We have seen that not even the courts of the same jurisdictions adhere to the same concept in all situations in which a problem arises which . . . turns upon what the concept of cause of action is." Schopflocher, *What Is A Single Cause Of Action For The Purpose Of The Doctrine Of Res Judicata?*, 21 Ore. L. Rev. 319, 363 (1942); See also, Van Brode Milling Co. v. Kellogg Co., 113 F. Supp. 845, 850 (D. Del. 1953).

4. Jones v. Grady, 62 N.D. 312, 243 N.W. 743 (1932); *see* U. S. v. Craddock-Terry Shoe Corp., 84 F.Supp. 842, 845 (W.D. Va. 1949).

5. Crawford v. Baker, 86 Ga. App. 855, 72 S.E.2d 790 (1952); United Shoe Machinery Co. v. U.S., 258 U.S. 451 (1922).

6. See Stark v. Starr, 94 U.S. 477, 485 (1876); Stoop v. Stoop, 256 S.W.2d 799 (Mo. 1953); Ulledalen v. U.S. Fire Insurance Co., 74 N.D. 589, 23 N.W.2d 856 (1946).

7. See the discussion in Vineseck v. Great Northern Ry., 136 Minn. 96, 161 N.W. 494 (1927).

8. Rockefeller v. St. Regis Paper Co., 39 Misc. 746, 80 N.Y.S. 975 (1903); Alhaugh v. Osborne-McMillan Elevator Co., 53 N.D. 113, 205 N.W. 5 (1925); *see In re* 431 Oakdale Avenue Bldg. Corp., 28 F. Supp. 63, 65 (N.D. Ill. 1939).

9. McVay v. Castenara, 152 Miss. 106, 119 So. 155 (1928); Wheeler Sav. Bank v. Tracey, 141 Mo. 252, 42 S.W. 946 (1897); Moran v. Plankington, 64 Mo. 337 (1876); Saypol v. Wolf, 165 Misc. 517, 1 N.Y.S.2d 199 (1937).

10. Johnson v. Provincial Ins. Co., 12 Mich. 216 (1864); Hyyti v. Smith, 67 N.D. 425, 272 N.W. 747 (1937); White v. Miley, 137 Wash. 80, 241 Pac. 670 (1925).

awareness was due to the plaintiff's own negligence.[11] Generally the rule is followed with few reservations in actions at law but in equity proceedings it is not applied against the interests of justice.[12]

In the instant case the court said, in effect, that the plaintiff was totally unaware that her rights in the leased lands were worth more than the portion she attempted to reserve for herself in the assignment, or that the assignment was void for lack of her husband's signature. Thus the case logically fell within the exception of ignorance. But the court went on to say that the rule with respect to splitting causes of action applies only to claims and demands which are part of one cause of action and are recoverable in the first action; it does not prevent a party from suing on a part of a cause of action nor does the rule prevent a party who is unsuccessful from bringing suit a second time on a new theory.[13] The novelty of the instant case is not the end but the means; that is, the relatively untried field of application of the exception to the old rule as set forth in the preceding paragraph. Heretofore, the courts have permitted the plaintiff to try the new action on the grounds that he had an election of remedies and it would be harsh to make him liable if his first attempt went amiss, or that one of the elections was not an election at all but a resort to a non-existent remedy.[14] It appears that this latter factor can be made applicable to the instant case, since there was just such a useless effort made by plaintiff in her primary action.

It seems odd that the question was not brought up as to whether the plaintiff was negligent in not being cognizant of the state law with respect to husbands and wives assigning instruments, thus allowing the court to look on her failure to comply with the statute as negligent ignorance and not except her from the rule.[15] It could also be argued that the exception should not apply where the ignorance was of a legal rather than a factual nature.[16]

The rules against splitting causes of action and of res judicata have long been under attack by jurists who see the inequitable results of too liberal or too strict application. To give the rules a literal interpretation and effect would often demand that an eye be closed to justice,[17] but on the other hand,

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11. Macon and Augusta Ry. v. Girrard, 54 Ga. 327 (1875); Badger v. Badger, 69 Utah 293, 254 Pac. 784 (1927).

12. Coull v. Piatt, 60 N.W.2d 157 (Mich. 1953); State v. Superior Court, 145 Wash. 576, 261 Pac. 110 (1927); *see* LaBour v. Michigan Nat. Bank, 335 Mich. 298, 55 N.W.2d 838 (1952).

13. Missildine v. Miller, 231 Iowa 371 1 N.W.2d 110 (1941) (*Revised on other grounds*); Wessel v. Shank, 57 Ohio App. 35, 11 N.E.2d 275 (1937); See also, Norwood v. McDonald, 142 Ohio St. 299, 52 N.E.2d 67, 76 (1943), where the court said: "If a wrong is committed and the victim is doubtful as to which of two or more remedies the facts will support, he may pursue all of them until he recovers by means of one."

14. Missildine v. Miller, 231 Iowa 371, 1 N.W. 110, 113 (1941) "Plaintiff's . . . fruitless effort to settle and his filing of a claim to that end was a resort to a remedy which did not exist and was not an election." See also, Taylor v. Quinn, 68 Ohio App. 164, 39 N.E.2d 627 (1941).

15. Badger v. Badger, 69 Utah 293, 254 Pac. 784 (1927).

16. International Curtis Marine Turbine Co. v. U.S., 56 F.2d 708 (Ct. Cl. 1932); *Cf.* Guettel v. U.S., 95 F.2d 229 (1938) (the court said they could find no cases where the Supreme Court of the U.S. has recognized ignorance or mistake as justifying a refusal to apply the rule that a prior judgement upon the merits is a bar to a second action upon the same claim or demand).

17. "If plaintiff, through negligence in not properly presenting her claim in the first instance, has lost her right to recover money which she allegedly advanced in reliance upon fraudulent representations of said individual defendants, it is a hardship but one from which the courts cannot relieve if the general and well-established rule against the splitting of a single cause of action is to be allowed for the benefit of all." Wulfjen v. Dolton, 24 Cal.2d 891, 151 P.2d 846,849 (1944).

were the rules liberally construed, with the exceptions gaining wide and varied application, the result might be more equitable but it would bring about an increase in the number of actions.[18] The theoretical difference between the "liberal" interpretation and the "strict" or "literal" interpretation of the rule against splitting causes of action lies in the definition of "cause of action"; whether it be a small group of operative facts to which the possible exceptions are numerous,[19] or whether it be a large group of facts, which would be all conclusive of the rights of the parties, barring most, if not all, subsequent actions.[20] Policy, as a result, controls the adjudication of actions which involve this question and the Kentucky court has unequivocally allied itself with the proposition that the rules are to be administered with due concern for the plight of unwary and unfortunate litigants.

LOUIS R. MOORE

CONSTITUTIONAL LAW — EQUAL PROTECTION OF THE LAWS — IS THE CONVEYANCE OF PROPERTY IN VIOLATION OF A RACIALLY RESTRICTIVE COVENANT BY A CO-COVENANTOR AN ACTIONABLE BREACH OF COVENANT?—Defendant conveyed her real estate to a non-Caucasian in violation of a written covenant, which she had endorsed, providing that the property should not be occupied by persons other than of the Caucasian race and that this restriction should be contained in all papers transferring the stipulated land. Plaintiff asked $11,600 damages for the breach of covenant. *Held* that to permit damages would discourage the sale of restricted land to other than Caucasians except at a premium to secure the seller for anticipated damages. This would deny non-Caucasians the right to buy property on the same terms as Caucasians and would be a denial by the states of equal protection of the laws. *Barrows v. Jackson*, 73 S.Ct. 1031 (1953).

In his dissent Chief Justice Vinson listed the following points as the basis for his disagreement:

1. The court has no jurisdiction since the party before the court is not within the class of persons whose constitutional rights may be impaired.[1] Although it is the general rule that no person may question the constitutionality of a statute who does not belong to the class of persons discriminated against, the rule is not applicable to every case.[2] When the constitutional rights of a person or class of persons are to be determined by a federal court it must determine them on the evidence presented.[3] There is no definite rule that will solve the question of Equal Protection of the Laws in every instance,

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18. *See* Clark v. Kirby, 243 N.Y. 295, 153 N.E. 79, 82 (1926) "All procedure is merely a methodical means whereby the court reaches out to restore rights and remedy wrongs; it must never become more important than the purpose which it seeks to accomplish."

19. McCaskill, *Actions and Causes of Actions*, 34 Yale L. J. 614 (1925).

20. Clark, Code Pleading, 137 (2d ed. 1947).

1. *See* Barrows v. Jackson, 73 S. Ct. 1031 (1953) (dissent).

2. Quong Ham Wah Co. v. Industrial Acc. Commission, 184 Cal. 26, 192 Pac. 1021, 1023 (1920); Green v. State, 83 Neb. 84, 119 N.W. 6, 7 (1908); *accord*, Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925).

3. Law v. Mayor and City Council of Baltimore, 78 F. Supp. 346, 351 (D. Md. 1948).