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Constitutional Law—Right to Jury Trial Under Emergency Price Control Act

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to survive in a hard climate, does it necessarily follow that the same standard should apply to jurors? It would seem that there would be a clear and present danger to the substantive evil of a disorderly and unfair administration of justice in that jurors may be biased by what they have heard and read outside of the court room long before a judge would be, unless the same premise is to be applied to jurors.

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CONSTITUTIONAL LAW— RIGHT TO JURY TRIAL UNDER EMERGENCY PRICE CONTROL ACT. In *United States v. Jepson*[1] the government brought an action under the Emergency Price Control Act of 1942[2] to recover treble damages for rent overcharges. The defendant moved for a jury trial, claiming that his right fell within the guarantee of the Seventh Amendment of the United States Constitution. *Held,* this action for a penalty under statute conforms to the requisites of the common law action of debt and trial by jury should be upheld.

In speaking of penalties under a civil statute, Blackstone was of the opinion that the action of debt arose from the obligations imposed on each citizen by the original social contract. When that contract was broken, the legislature prescribed a sum certain as a penalty which then became due and owing as a debt.[3] In the instant case it is the statute that supplies the *causa debendi* and stipulates that a certain or ascertainable sum is due and owing to specified persons when the specified acts are done.[4] Thus, all the requisites of the action of debt are fulfilled when the obligation to pay and the certainey of the amount due arise from the operation of the statute.

The right to trial by jury in a civil case originates in the Seventh Amendment of the Constitution which states:

> In suits at common law where the value of the controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.[5]

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1. 90 F. Supp. 983 (D.C.N.J. 1950). The opinion is that of the district court judge in response to defendant's motion for a jury trial.
2. Presumably under § 205e of 56 STAT. 23, 50 U.S.C. § 205e (1946) as amended 50 U.S.C.A. § 925e (Supp. 1950).
3. 3 BL. COMM. 161.
4. KEIGWIN, CASES IN COMMON LAW PLEADING, 34 (2d ed. 1934).
5. U.S. CONST. AMEND. VII.

Whether the action of debt on a statute is a suit at common law and therefore within the guarantees of the Seventh Amendment depends on what were considered suits at common law when the Constitution was adopted.[6] An early case, *Parsons v. Bedford,* defines suits at common law as:

> . . . not merely suits which the common law recognized among its old and settled proceedings, but suits in which legal rights were to be ascertained and determined, in contra distinction to those where equitable rights alone were recognized.[7]

Perhaps it is because the law is so settled on the point that few cases have arisen where the issue involved the defendant's right to a jury trial in a suit based on a penal statute requiring forfeiture or the payment of money. In the great bulk of the cases on penal statutes, the primary issue has been: Is this a civil or a criminal case? Such a question had to be answered, not to decide the right of trial of jury, but to rule on the admission of evidence. If the action was criminal, the Constitution requires confrontation by the accusors[8] and prohibits self-incrimination.[9]

The great majority of cases has held statutory actions for forfeiture or for money to be civil.[10] In some of these cases, the courts have decided collaterally that the right of trial by jury originates from the Seventh Amendment. Thus, in *United States v. Regan,* the court said:

> While the defendant was entitled to have the issues tried before a jury, this right did not arise from Article III of the Constitution or from the Sixth Amendment for both relate to prosecutions which are strictly criminal in their nature . . . but it did arise out of the fact that in a civil action of debt involving more than $20, a jury trial is demandable.[11]

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6. U.S. v. Wood, 299 U.S. 123 (1936); Dimick v. Scheidt, 293 U.S. 474 (1935); Vide Bellevance v. Plastic Craft Novelty Company, 30 F. Supp. 37 (D.C. Mass. 1939); Fitzpatric v. Sun Life Assur. Co. of London, 1 F.R.D. 713 (D.C.N.J. 1941); Toucey v. New York Life Ins. Co., 102 F.2d 16 (8th Cir. 1939); Simmons v. U.S., 29 F. Supp. 285 (W.D. Ky. 1939).

7. 3 Pet. 433, 447 (1830).

8. U.S. CONST. AMEND. VI.

9. U.S. CONST. AMEND. V.

10. Hepner v. U.S., 213 U.S. 103 (1903); Stearns v. U.S., 22 Fed. Cas. 1188, No. 13,341 (D.C. Vt. 1830); Quantity of Manufactured Tobacco, 20 Fed. Cas. 121, No. 11,499 (S.D.N.Y. 1879); Jacobs v. U.S., 13 Fed. Cas. 267, No. 7,157 (E.D. Vir. 1821); Stockwell v. U.S., 13 Wall. 531, 542, 543 (1871); U.S. v. Zucker, 161 U.S. 475 (1895); U.S. v. Mundel, 27 Fed. Cas. 23, No. 15,834 (C.C. Vir. 1795)

11. U.S. v. Regan, 232 U.S. 37, 47 (1913).

In *United States v. Steamship, the Queen,*[12] however, the right of trial by jury under the Seventh Amendment was raised directly when the defendant demanded a jury trial, but only then because there was some doubt whether the master of the ship was under admiralty jurisdiction and therefore not entitled to trial by jury. In this case, the vessel and master were being sued for penalties under the revenue laws for smuggling. As to the vessel, it was clear that it was under admiralty jurisdiction and would be proceeded against by libel. The master of the ship insisted on a jury trial as guaranteed in suits at common law under the Seventh Amendment of the United States Constitution. It was held by the court that since the action against the master was neither in admiralty as defined by statute, nor in equity, it must be at common law and therefore subject to the guarantees of the Seventh Amendment.

The substantive right of trial by jury in actions for a penalty under statute has lost none of its validity under the Federal Rules of Civil Procedure, even though there is now but one form of action, the civil action. It was pointed out in *Conn. v.Kohleman* that:

> The Federal Rules of Civil Procedure, while abolishing any distinction in procedure between law and equity, did not abolish the distinction between legal and equitable remedies, and preserved the right to a jury trial as declared by this [VII] Amendment.[13]

Thus, before the enactment of the Emergency Price Control Act of 1942, under which the principal case was decided, there was a large body of authority which clearly supported the proposition that debt on a statute was a common law action which carried with it the right of trial by jury under the Seventh Amendment.[14] Yet, in spite of this authority, the Federal Courts have so construed the various remedies under the Act in such a way as to deny the right of trial by jury in a large number of cases.

The pivotal case in which the right to trial by jury has been

12. 27 Fed. Cas. 669, No. 16,107 (S.D.N.Y. 1870)
13. 2 F.R.D. 514, 516 (E.D. Pa. 1942).
14. Though there is a surprising dearth of square holdings on the point, the proposition is well established by dicta. This lack of direct authority can best be explained because few defendants were denied trial by jury. It was only in unusual cases such as the United States v. Steamship, the Queen, 27 Fed. Cas. 669, No. 16,107 (S.D.N.Y. 1870) which involved the question of admiralty jurisdiction, that the Constitutional right of trial by jury was an important issue in the case.

limited is *Porter v. Warner Holding Co.*[15] In this case the United States brought a suit under section 205a[16] of the Emergency Price Control Act of 1942. This part of the Act authorized an injunction or other order against the landlord to restrain the extraction of rents in excess of the ceiling price. The government prayed for an injunction against further offenses and for return of the over-charges by way of restitution. The principal conflict was whether it was proper to allow recovery of rents under the injunction section of the statute with no jury trial, in view of the fact that the Act in another section also provided that the tenant, or the United States standing in his place, could recover treble damages for the overcharge.[17]

The cases on the allowance of damages in equity were in conflict and the authoritative writers were in complete disagreement.[18] This left the Supreme Court in the *Porter* case without a clear line of authority for the proposition that once a court sitting in equity has taken jurisdiction it will give all further

15. 328 U.S. 395 (1945).

16. EMERGENCE PRICE CONTROL ACT of 1942, note 1 *supra*, § 205a provided that: "Whenever, in the judgment of the Administrator any person has engaged in or is about to engage in any act or practice which constitute or will constitute a violation of any provision in section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance to such provision, and upon showing by the Administrator, that such a person has engaged or is about to engage in such acts or practices, a permanent or temporary injunction, restraining order, or other order shall be granted without bond."

17. EMERGENCE PRICE CONTROL ACT of 1942, note 1 *supra*, § 205e provides that the tenant may bring suit for treble damages within one year of the overcharge, but if the tenant does not press suit within the thirty day period or is otherwise disabled, the Adminisrator, on behalf of the United States, may bring suit within the one year period following the overcharge. An action by the Administrator will be a bar to the tenant.

18. It is to be noted that where no statute is involved, the law is unsettled on this point and there is great conflict among the writers. In COOK, CASES ON EQUITY 136 n. 8 (3rd Ed. 1940), the author criticised the position stated in AMES, CASES ON EQUITY JURISDICTION 571 (1st Ed. 1904). This was the same proposition quoted in *Porter v. Warner Holding Company* as the controlling reason for allowing money payments to be recovered as an incident to injunctive relief. It was Cook's opinion that it was impossible to know whether the plaintiff was appealing to the equity or to the law side of the court unless one of the parties made a demand for trial by jury. If there is a distinctly legal right involved, he was further of the opinion that the defendant's right to a jury trial was a substantive Constitutional right which should be unheld. The attack on Ames was met in CHAFEE, CASES ON EQUITABLE RELIEF AGAINST TORTS 257 (1st Ed. 1924). Chafee saw no reason why the Constitutional guarantees would be infringed in denying trial by jury since courts of equity were assessing damages at the time of the adoption of the Constitution.

relief including money damages. But the majority of the court attempted to resolve the conflict in the cases and among the writers by adopting the principle that:

> [when] the equitable jurisdiction of the court has properly been invoked for injunctive purposes, the court has the power to decide all relevant matters in dispute and to award complete relief even though the decree includes that which may be conferred by a court of law.[19]

The dissenters in the 5 to 3 decision, led by Mr. Justice Rutledge, could not subscribe to the principle adopted by the majority nor could they indorse the traditional reasons for allowing equity to give money relief once the court has taken jurisdiction, expecially when this doctrine conflicted with the minutely planned remedies under the Act. Mr. Justice Rutledge seized on the admission by the majority that section 205e of the Act[20] provided the exclusive remedy in damages. It is important to note that the statutory period in which the tenant could bring an action under section 205e had passed. The Administrator, however, could still sue on that section for the benefit of the United States. The dissenter went on to point out his objections to the allowance of damages by way of restitution under the injunction section of the act:

> But we are asked in effect to decide that he [the Administrator] can take the money the Act says shall go into the Treasury and give it to the person whose right to recover it the Act has cut off . . . even courts of equity may not grant relief in disregard of the remedies specifically defined by Congress.[21]

Subsequent cases[22] have followed the reasoning of the majority in the *Porter* case. They have held that the order for restitution could be given under the injunction section of the Act and have rejected the contention that the tenant could not be benefited because his right to sue for treble damages has been cut off. One court, however, lamented having to follow the *Porter* case

19. Porter v. Warner Holding Co., 328 U.S. 395, 399 (1945).
20. EMERGENCY PRICE CONTROL ACT of 1942, note 1 *supra*.
21. Portner v. Warner Holding Company, 328 U.S. 395, 407 (1945).
22. Creedon v. Randolph, 165 F.2d 918, 920 (5th Cir. 1948); Wood v. Lajeunesse, 82 F. Supp. 445 (D.S.N.H. 1949); Woods v. Witzke, 174 F.2d 855 (6th Cir. 1949); Cobleigh v. Woods, 172 F.2d 167 (1st Cir. 1949); Warner Holding Company, v. Creedon, 166 F.2d 119 (8th Cir. 1948); Woods v. Blake, 84 F. Supp. 570 (D.C.N.J. 1949); Creedon v. Arielly, 8 F.R.D. 265 (W.D.N.Y. 1948); U.S. v. Cowen's Estate, 91 F. Supp. 331 (D.C. Mass. 1950).

because the remedies provided for in the Act did not contemplate restitution as a substitute for damages as provided for in section 205a.

> It might be objected that where the Administrator is entitled to sue for statutory damages under section 205e the Act provides that the whole of the recovery goes to the United States and that therefore, it would be improper to divert part of the recovery to tenants in the guise of a restitution order under section 205a. But if the result seems odd, it is still, we think, a logical consequence of the holding in *Porter v. Warner Holding Co.*[23]

Since the decision in the *Porter* case the lower federal courts have consistently pointed to that case as authority for the proposition that restitution may be given under section 205a of the Emergency Price Control Act.[24] It is submitted that the validity of that case as authority in other cases where different remedies are sought and different sections of the Act are invoked is of considerable doubt. In the following cases it will be shown that although the remedies sought were vastly different than those pressed by the government in the *Porter* case, the lower federal courts have followed that case even when the result has been to restrict the Constitutional right of trial by jury in suits on a penal statute.

Thus, in *Woods v. Blake*[25] the Administrator brought suit for an injunction and for treble damages. Both sections 205a and 205e were invoked by the Administrator. The defendant insisted that the prayer for an injunction under section 205a should not deprive him of a jury trial on the issue of legal damages under section 205e. He argued:

> There exists a right of trial by jury as a right when the issue is one of legal damages. The injunctive relief is incidental and the recovery of money damages in the instant case does not depend *in any way* on the prior showing of cause for injunctive relief.[26]

This contention was denied by the court and trial by jury was refused on the theory that once equity had taken jurisdiction under the injunction section of the Act, it would give full relief in the form of damages. Since damages were asked for under

23. Cobleigh v. Woods, 172 F.2d 167 (1st Cir. 1949).
24. See note 22 *supra*.
25. 84 F. Supp. 570 (D.C.N.J. 1949).
26. Woods v. Blake, 84 F. Supp. 570, 571 (D.C.N.J. 1949).

section 205e, there was no vesitge of a reason for holding that they were given as incidental to equitable relief. The *Porter* case was thus completely distinguishable on this point. But at least it did resemble that case in one important aspect: injunctive relief was demanded.

Other cases[27] have gone even further in extending the *Porter* case beyond its facts. Even when no injunctive delief was demanded the courts have allowed damages by way of restitution without trial by jury. These cases, differing so materially from the facts and grounds of proceeding adopted in the *Porter* case cannot claim it as authority for the broad proposition stated in *Creedon v. Arielly* that:

> . . . the Constitutional right to a jury trial is not applicable to this case. Amendment VII of the Constitution guarantees the right of trial by jury in Suits at common law. It does not apply to the Emergency Price Control Act of 1942. It is only to rights and remedies as they were generally known and enforced by jury trial that the Amendment applies.[28]

The statement is pure dictum because the admissions in the case, under the Federal Rules of Civil Procedure section 36a, left no issue of fact remaining for a jury to try. It is apparent that this language is entirely inconsistent with the principal case of *United States v. Jepson.* One must be wrong. It is submitted that the principal case is more in keeping with the authorities than is *Porter v. Warner Holding Co.* and the cases which follow and extend it to different factual situations. Extending the doctrine of incidental legal relief in equity to cases involving the action of debt on a statute will result in the deprivation of the right to trial by jury in a well recognized common law action. The *Porter* case has not only refused to follow the long line of authority that debt on a statute is triable by jury, but it encourages a strained construction of economic legislation, the result of which is to whittle away the right of trial by jury.

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27. U.S. v. Cowen's Estate, 91 F. Supp. 331 (D.C. Mass. 1950); Creedon v. Randolph, 165 F.2d 918, 920 (5th Cir. 1948); Woods v. Lajeunesse, 82 F. Supp. 445 (D.C.N.H. 1949); Creedon v. Arielly, 8 F.R.D. 265 (W.D.N.Y. 1948).

28. Creedon v. Arielly, 8 F.R.D. 265, 268 (W.D.N.Y. 1948).