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COURTS-VALIDITY OF CONTRACTS RESTRICTING VENUE IN ACTIONS UNDER THE FEDERAL EMPLOYERS' LIABILITY ACT

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COURTS—VALIDITY OF CONTRACTS RESTRICTING VENUE IN ACTIONS UNDER THE FEDERAL EMPLOYERS' LIABILITY ACT—Petitioner suffered injuries in the course of his duties as an employee of respondent railroad. Subsequently, respondent advanced money to petitioner and the latter agreed in writing that if his claim could not be settled he would sue only in the county or district where he resided at the time of the injury, or in the county or district where the injury was sustained. This agreement restricted petitioner's choice of venue to either a state or federal court sitting in Michigan. Ignoring the contract, petitioner sued in an Illinois court. Respondent then brought suit in the Michigan courts to enjoin the Illinois proceeding and the injunction was granted.[1] On certiorari, *held,* reversed. The contract restricting venue was void since it conflicted with the provisions of sections 5 and 6 of the Federal Employers' Liability Act.[2] *Boyd v. Grand Trunk Western Railroad Company,* (U.S. 1949) 70 S.Ct. 26.

It is a general rule of contract law that agreements restricting choice of venue or depriving particular courts of jurisdiction are void as against public policy.[3] An exception to the general rule is where the agreement is made after the cause of action has accrued.[4] The reason behind the exception is that once the cause of action has accrued, it is immaterial whether a plaintiff selects his venue by contract or simply by bringing suit. It being therefore generally recognized that agreements similar to that in the principal case are valid so far as contract law is concerned,[5] the real issue is whether they contravene either the policy or the express provisions of the FELA. In the past, both state and federal courts have split almost evenly on this question,[6] and the principal case is significant because it decides the controversy with finality. The express ground of the decision is that such contracts conflict with the provisions of sections 5 and 6 of the Act.

[1] 321 Mich. 693, 33 N.W. (2d) 120 (1948).

[2] 35 Stat. 65 (1908), as amended, 45 U.S.C. (1946) §51 et seq.

[3] 6 WILLISTON, CONTRACTS, rev. ed., §1725 (1938), and cases there cited; CONTRACTS RESTATEMENT, §558 (1932); 59 A.L.R. 1445 (1929); 107 A.L.R. 1060 (1937).

[4] Note 3, supra.

[5] That such agreements are valid under contract law is usually assumed without discussion, but see the concurring opinion of Judge Learned Hand in Krenger v. Pennsylvania R. Co., 174 F. (2d) 556 at 560 (1949) in which he argues that they are invalid contracts, but not because of §5 of the Liability Act. Justices Frankfurter and Jackson concurred in the principal case on the same grounds.

[6] The conflicting decisions are cited in footnote 3 of the principal opinion. Holding these contracts valid are Roland v. Atchison, T. & S.F. R. Co., (D.C. Ill. 1946) 65 F. Supp. 630; Herrington v. Thompson, (D.C. Mo. 1945) 61 F. Supp. 903; Clark v. Lowden, (D.C. Minn. 1942) 48 F. Supp. 261; Detwiler v. Chicago, R. I. & P. R. Co., (D.C. Minn. 1936) 15 F. Supp. 541; and Detwiler v. Lowden, 198 Minn. 185, 269 N.W. 367 (1936). Cases holding these contracts invalid are Krenger v. Pennsylvania R. Co., (2d Cir., 1949) 174 F. (2d) 556; Akerly v. New York C. R. Co., (6th Cir., 1948) 168 F. (2d) 812; Fleming v. Husted, (D.C. Iowa 1946) 68 F. Supp. 900; Sherman v. Pere Marquette R. Co., (D.C. Ill. 1945) 62 F. Supp. 590; Petersen v. Ogden U. R. & D. Co., 110 Utah 573, 175 P. (2d) 744 (1946).

Section 6 gives a very wide choice of venue to plaintiffs.[7] The apparent purpose of Congress was to give injured workers every possible procedural advantage in dealing with the carriers;[8] and, as the Court puts it, these venue privileges of employees have always been considered a "substantial right." Section 5 provides that "any contract . . . the purpose or intent of which shall be to enable any common carrier to exempt itself from *any liability* created by this chapter, shall to that extent be void . . . "[9] and the Court in defining "any liability" includes within it the venue provisions of section 6. Therefore, a contract designed to protect the carrier from suit except in certain courts has the effect of exempting the carrier from liability. The Court thus hinges the decision on the meaning of "liability" as used in the act, and this is the point upon which most of the decisions of the lower federal courts and the state courts have turned. But if Congress actually intended to include venue within liability it certainly did not express this intent very clearly, as illustrated by the split of authority mentioned above.[10] The case will certainly have to be distinguished if and when the possible future contention is made that the liability of a defendant includes all of the procedural rights of a plaintiff for all purposes. While such a distinction would not be difficult to make, it is submitted that there is an alternative ground for the decision which is sound and does not require a strained and controversial construction of the meaning of words. This alternative ground is implied in the last paragraph of the opinion. "The right to select the forum granted in §6 is a substantial right. It would thwart the express purpose of the Federal Employers' Liability Act to sanction defeat of that right by the device at bar."[11] The use of the term "express purpose" rather than "express language" indicates that the Court recognizes that there is present a question of policy as well as a question of statutory interpretation. If the decision can be considered as resting on considerations of policy rather than the strict language of the statute, the case will not become a troublesome precedent in construing the word "liability" when used in other statutes.

John C. Walker, S.Ed.

[7] 45 U.S.C. §56 provides: ". . . an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States. . . ."

[8] See the comment in 27 N.C. L. Rev. 248 (1949) which discusses the failure of the various attempts by the railroads to limit venue under the FELA. Also Baltimore & O. R. Co. v. Kepner, 314 U.S. 44, 62 S.Ct. 6 (1941) and Miles v. Illinois C. R. Co., 315 U.S. 698, 62 S.Ct. 827 (1942), discuss the legislative purposes behind §6 of the act.

[9] 35 Stat. 66 (1908), 45 U.S.C. (1946) §55. Italics added.

[10] It should be noted that when §5 was written in 1908 there were no special venue provisions in the act, and the "liability" referred to at that time must have meant the liability created by §1. Section 6 was added by amendment in 1910.

[11] Principal case at 28 (1949).