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CIVIL PROCEDURE-JURISDICTION-AMOUNT IN CONTROVERSY IN INFERIOR COURT WHERE CAUSE OF ACTION IS SPLIT

John F. Spindler S.Ed.
University of Michigan Law School

RECENT DECISIONS

CIVIL PROCEDURE—JURISDICTION—AMOUNT IN CONTROVERSY IN INFERIOR COURT WHERE CAUSE OF ACTION IS SPLIT—Plaintiff, a manufacturer's agent, sued his employer in the Municipal Court, Civil Division, Washington, D. C. in two separate actions to recover commissions on his contract of employment. The two actions were consolidated for trial. At the trial defendant moved to dismiss for want of jurisdiction on the ground that this was but one cause of action and, while neither of the claims individually exceeded the jurisdictional maximum, the total claimed in both suits did exceed it. The motion to dismiss was denied, and after trial, judgments were entered for plaintiff in both actions. Defendant appealed. The Municipal Court of Appeals for the District of Columbia *held,* this was but a single cause of action and therefore the total amount in controversy exceeded the jurisdictional limit. The motion to dismiss should be granted. *Le John Mfg. Co. v. Webb,* (Mun. Ct. App. D.C. 1952) 91 A. (2d) 332.

As a general rule, the jurisdiction of an inferior court is determined by the amount demanded, not the amount due.[1] In the principal case, each complaint stated a cause of action and demanded an amount within the jurisdictional limits of the court. On the face of the summons and complaint, therefore, it appeared in each action that the court had jurisdiction. Where the plaintiff has split his cause of action in order to bring it in an inferior court, however, there is a tendency on the part of the courts to treat this as a jurisdictional question rather than a situation which calls for the ordinary rules applicable to splitting a cause of action.[2] It is submitted that the fact that the defendant has a right to object to splitting the cause of action should not alter the question as to whether in each of these claims the court had jurisdiction. Had part of the claim been brought first, the courts generally would say that the inferior court could render a valid judgment as to that claim because it was within the jurisdictional limits of the court.[3] In the event of a second suit on

[1] Bridges v. Joanna Cotton Mills, 214 S.C. 319, 52 S.E. (2d) 406 (1949); 51 C.J.S., Justices of the Peace §35(a) (1947).

[2] The principal reason for this attitude seems to be the feeling that the plaintiff is committing a fraud on the general trial court in that by splitting his cause of action he avoids that court's jurisdiction. State ex rel. Shawver v. Casto, (W.Va. 1952) 68 S.E. (2d) 673; 51 C.J.S., Justices of the Peace §35(a)(f) (1947).

[3] It is generally held that an inferior court has jurisdiction to try an action where the amount demanded is within its jurisdictional limit and to render a judgment up to that limit regardless of the fact that there is or may be a larger amount of damages actually owing. 51 C.J.S., Justices of the Peace §35(a) (1947). This rule sometimes goes under the somewhat misleading name of "remission." By that the courts mean that in bringing his claim for the lesser amount in the inferior court, the plaintiff constructively remits the excess of his claim if the defendant properly raises an objection to the splitting. This is nothing more than the ordinary application of the rules of res judicata. By giving it a special name, however, some courts seem to find it easier to shelve res judicata and regard the question as jurisdictional. See State ex rel. Shawver v. Casto, supra note 2. If the court has jurisdiction to render the judgment in the first action, it is difficult to see how the subsequent actions of the plaintiff could operate retroactively to divest the court of jurisdiction in the first instance and render the judgment void.

the rest of the cause of action, the courts would apply the ordinary rules of res judicata concerning splitting causes of action.[4] They would not ordinarily take the position that the total of the prior judgment and the sum claimed in the present action exceeded the jurisdictional amount and that therefore the inferior court did not have jurisdiction over the subject matter, but on the contrary would permit a second judgment in the municipal court on the same cause of action so long as the defendant did not object.[5] If two judgments in the same court on the same cause of action which together exceed the jurisdictional limit are void for want of jurisdiction, then the failure of the defendant to object would be of no consequence since the court could raise the issue on its own motion.[6] From that it would appear that there is a want of jurisdiction only if the claims are brought simultaneously.[7] Yet the mere fact that the total amount adjudicated by the court in any one trial exceeds the jurisdictional limit is not controlling because had there actually been two separate causes of action against defendant which were either joined or consolidated for trial, there is little question but that the municipal court would have had jurisdiction even though the total amount in controversy in the two actions exceeded the jurisdictional limit.[8]

The policy against splitting a cause of action is designed chiefly to protect the defendant from vexation by a multiplicity of suits,[9] and normally the defenses arising out of splitting, i. e., pendency of another action and res judicata, either merger or bar, are solely in the hands of the defendant and may be waived by him at will. By a failure to object, the defendant is not giving jurisdiction to the inferior court where it had none before, but is merely waiving his right to be free from vexatious litigation, and whether the court tries the claims one at a time or all together should have no bearing on the question of jurisdiction. Only the defendant is harmed by the splitting, and he is well equipped to defend himself. In any situation where the suits are not tried together, he has an option: he can wait until judgment is rendered in one of the suits and then plead it as res judicata in the other or he can have whichever claim he chooses abated, and then if plaintiff does not ask for a voluntary nonsuit in the other, he can plead res judicata as in the first situation.[10] If,

[4] JUDGMENTS RESTATEMENT §62, comment *m* (1942). Splitting a cause of action is simply a problem in res judicata. CLARK, CODE PLEADING §73 (1947).

[5] Res judicata must be properly pleaded before it is a defense. It can be waived by the consent of the defendant. JUDGMENTS RESTATEMENT §62, comment *m* (1942); 1 C.J.S., Actions §102(g) (1936); 1 AM. JUR., Actions §101 (1936).

[6] Fed. Rules Civ. Proc., Rule 12(h), 28 U.S.C. (1946).

[7] See State ex rel. Shawver v. Casto, supra note 2.

[8] Louisville & N.R. Co. v. United States, (D.C. Ky. 1952) 106 F. Supp. 999.

[9] 1 C.J.S., Actions §102(c) (1936).

[10] If defendant has one of the actions abated, it will serve as a warning to plaintiff that he can expect the defense of res judicata to be raised in the other action, and he may then feel that the wiser move would be to have his action dismissed and bring both actions in the court of general jurisdiction. By doing nothing until a judgment is handed down in one of the actions, defendant stands a good chance of defeating the other one by pleading res judicata. A few cases collected in 62 A.L.R. 256 (1929) indicate that if defendant

as here, the suits are tried together so that there is a practical danger of simultaneous judgments, defendant has only one choice and that is to have one of the actions abated until there is a judgment in the other.[11] In the principal case, the court had jurisdiction over each of the actions and even if the question were properly raised would have no right to dismiss both of them. It could, however, dismiss either of them if the defendant had pleaded a defense in abatement in one of his answers. Here, however, the defense in abatement was waived[12] because defendant failed to plead it in his answer. It is submitted that since defendant received a trial on the merits on both claims, albeit in an inferior court, the court should have denied defendant's motion to dismiss and should have permitted both judgments to stand rather than take the position that the municipal court had no jurisdiction over the claims.

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fails to raise the defense of pendency of another action before judgment is rendered in one of the actions he will be deemed to have consented to the splitting and will not be permitted to plead res judicata in the second action. It is doubtful whether these cases represent the majority rule, and on principle they should not if the courts are interested in forceful application of the rule against splitting. The defense of res judicata should not be held to have been waived since it was not in existence until a judgment was rendered in one of the actions.

[11] Pendency of another action is pleaded under the Federal Rules in the same manner as any other affirmative defense. It must be set forth in the answer as provided by Rule 8(c), 28 U.S.C. (1946). It may not be raised on a motion to dismiss under Rule 12(b), 28 U.S.C. (1946), for that rule permits defenses involving matters outside of the record to be raised on motion to dismiss only in certain enumerated instances and the defense of pendency of another action is not one of them. Sproul v. Gambone, (D.C. Pa. 1940) 34 F. Supp. 441; Dirk Ter Haar v. Seaboard Oil Co. of Del., (D.C. Cal. 1940) 1 F.R.D. 598. See also the headnote in 102 Bul. 14, U.S. Dept. of Justice Decisions on Federal Rules of Civil Procedure (1941).

[12] The defense of pendency of another action is a defense in abatement. It is purely for the convenience of the defendant. A failure to raise it by proper and timely objection constitutes a waiver. Brooks v. Woods, (9th Cir. 1950) 181 F. (2d) 716. This is also the tenor of the decisions prior to the Federal Rules. In re Eiler's Music House, (9th Cir. 1921) 274 F. 330 at 335; In re Buchan's Soap Corp., (D.C. N.Y. 1909) 169 F. 1017. Res judicata, on the other hand, is a defense on the merits. It may be waived by a failure to plead it before judgment, but it can be raised by a motion to amend the answer on the grounds of a subsequently arising defense on the merits at any time before final judgment. See note 10 supra.