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Article 19

Procedure - Imposition of Federal Practice on State Courts

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make close calculations, or try to slip by on chance; it must give way to the vehicle on the right when it is anywhere near the crossing.[15]

Relying upon *Moran v. Gatz*,[16] *Burns v. Jackson*,[17] and *Waterbury v. Chicago, M. and St. P. Ry. Co.*,[18] the court held that where a modified construction has been placed upon the statute by courts of review, the instruction should be framed according to that construction and the jury properly instructed as to its legal effect. In *Burns v. Jackson*,[19] the court, citing the *Waterbury* case, held:

> While numerous authorities uphold the practice of giving instructions containing the very language of the statute, yet we think that where a modified construction has already been placed thereon by our Supreme Court, ... the instruction should be framed accordingly, otherwise it would be apt to mislead the jury.

However, the Supreme Court of Illinois has never granted certiorari to review the decisions of the appellate courts where it was held reversible error to charge the jury in the words of the right-of-way statute without qualification. Nevertheless, decisions of the appellate courts should come within the rule set out in the *Waterbury* case, and modifying constructions having been placed upon statutes by appellate courts, the lower courts should frame their instructions accordingly.

All of the cases which apply this rule seem to involve some section of the Motor Vehicle Act. In analyzing these statutes, particularly the right-of-way statute, the legislature seems to have indicated an intention merely to set up a guide rather than a hard and fast rule, leaving it to the courts to properly qualify the statute in any instruction to the jury.

This principle that an instruction to the jury given in the words of the statute is reversible error unless qualified does not seem to have any application to other types of statutes than those already discussed.

PROCEDURE–IMPOSITION OF FEDERAL PRACTICE ON STATE COURTS

Petitioner, employee of defendant railroad, was seriously injured when an engine in which he was riding jumped the track. He claimed his injuries were due to the defendant's negligence and brought an action in an Ohio court under the Federal Employers' Liability Act.[1] Defendant claimed that petitioner had signed a release; petitioner alleged that the release was obtained by fraud.

[15] Shuman v. Hall, 246 N.Y. 51, 158 N.E. 16 (1927).
[16] 327 Ill. App. 480, 64 N.E. 2d 564 (1946).
[17] 224 Ill. App. 519 (1922).
[18] 207 Ill. App. 375 (1917).
[19] 224 Ill. App. 519, 528 (1922).
[1] 35 Stat. 65 (1908), 45 U.S.C.A. § 51 (1951).

Though the jury found for the petitioner, the trial judge later entered judgment *non obstante veredicto*. This decision was affirmed by the Ohio Supreme court.[2] On writ of certiorari, the United States Supreme Court reversed the Ohio Supreme Court's decision and remanded the case. The majority opinion held: (1) that the validity of the release was to be determined by federal law and not Ohio law; and (2) that the issue of fraud was to be determined by the jury and not by the judge as was the practice in Ohio. Four judges concurred in the result but dissented from the view as to the determination of the issue of fraud. *Dice v. Akron, Canton and Youngstown R. Co.*, 72 S. Ct. 312 (1952).

The rights which the Federal Employers' Liability Act creates are governed by federal rather than local rules of law.[3] The validity of a release executed by a railroad employee, covered by the Federal Employers' Liability Act, is therefore controlled by federal law.[4]

The Seventh Amendment to the United States Constitution says: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."[5] The majority of the Court in the *Dice* case held that the right to a trial by jury is a basic and fundamental feature of our system of federal jurisprudence, and that it is part and parcel of the remedy afforded railroad workers under the Employers' Liability Act. The reason given by the Court was first used in *Jacob v. New York City*,[7] which originated in a federal court where it would be conceded that the Seventh Amendment of the United States Constitution is applicable. The majority of the Court then went on to say that the right to trial by jury is too substantial a part of the rights accorded by the Federal Employers' Liability Act to permit it to be classified as a mere local rule of procedure. The Court cited *Brown v. Western R. Co. of Alabama*[8] wherein it was held that, "Strict local rules of pleading cannot be used to impose unnecessary burdens upon rights of recovery authorized by federal laws."

The concurring judges, in dissenting from the view that the issue of fraud in obtaining this release is to be determined by the jury rather than the judge, relied on the case of *Minneapolis & St. Louis Railroad Co. v.*

[2] 155 Ohio St. 185, 98 N.E. 2d 301 (1951).

[3] Bailey v. Central Vermont Ry. Inc., 319 U.S. 350 (1943); Chesapeake and Ohio Ry. Co. v. Kuhn, 284 U.S. 44 (1931); Seaboard Air Line Ry. v. Horton, 233 U.S. 492 (1914); Mondou v. New York, N.H. and H.R. Co., 223 U.S. 1 (1912).

[4] Thompson v. Camp, 163 F. 2d 396 (C.A. 6th, 1947), cert. denied 335 U.S. 824 (1948).

[5] U.S. Const., Amend. 7.

[6] Dice v. Akron, Canton and Youngstown R. Co., 72 S. Ct. 312 (1952).

[7] 315 U.S. 752 (1942).

[8] 338 U.S. 294 (1949).

Bombolis,[9] which they felt the majority should have overruled explicitly, since the reasoning in that case is meaningless in view of the majority opinion in the instant case. In the *Bombolis* case, it was said, after holding that the Seventh Amendment of the United States Constitution was not applicable to the states:

> ... it is conceded that rights conferred by Congress, as in this case, may be enforced in state courts; but it is said this can only be provided such courts, in enforcing the Federal right, are to be treated as Federal courts and be subjected *pro hac vice* to the limitations of the Seventh Amendment. And, of course, if this principle were well founded, the converse would also be the case, and both Federal and state courts would, by fluctuating hybridization, be bereft of all real, independent existence. That is to say, whether they should be considered as state or as Federal courts would from day to day depend not upon the character and source of the authority with which they were endowed by the government creating them, but upon the mere subject-matter of the controversy which they were considering.[10]

There are numerous cases holding that the Seventh Amendment of the United States Constitution, guaranteeing the right to a jury trial in civil cases, applies only to proceedings in the federal courts;[11] and that the amendment is not made applicable to the state courts by either the privileges or immunities clause[12] or the due process clause[13] of the Fourteenth Amendment of the United States Constitution. The right to trial by jury is not in all cases essential to due process of law.[14]

Ohio, like many of her sister states, retains the division of law and equity, and where it is claimed that a release was induced by fraud (other than fraud in the *factum*) or by mistake, before the cause of action which the release purports to bar can be brought, equitable relief from the release must first be secured.[15] Consequently, in Ohio the judge and not the jury is the trier of fact on this issue of fraud.

"There is nothing, however, in the Constitution of the United States or its Amendments that requires a State to maintain the line with which we

[9] 241 U.S. 211 (1916). This action was brought under the Federal Employers' Liability Act and the U.S. Supreme Court upheld the Minnesota law whereby five-sixths of the jury is sufficient for a verdict in a negligence case.

[10] Minneapolis and St. Louis R.R. Co. v. Bombolis, 241 U.S. 211, 221 (1916).

[11] Pearson v. Yewdall, 95 U.S. 294 (1877); Walker v. Sauvinet, 92 U.S. 90 (1875); Edwards v. Elliot, 21 Wall. (U.S.) 532 (1874); The Justices v. Murray, 9 Wall. (U.S.) 274 (1869); Livingston v. Moore, 7 Pet. (U.S.) 469 (1833); Ashley v. Wait, 228 Mass. 63, 116 N.E. 961 (1917), writ of error dismissed 250 U.S. 652 (1919).

[12] Walker v. Sauvinet, 92 U.S. 90 (1875).

[13] Ashley v. Wait, 228 Mass. 63, 116 N.E. 961 (1917), writ of error dismissed 250 U.S. 652 (1919).

[14] Montana Co. v. St. Louis Mining and Milling Co., 152 U.S. 160 (1894); Murray's Lessee v. Hoboken L. and I. Co., 18 How. (U.S) 272 (1855).

[15] 45 Am. Jur., Release § 52 (1943).

are familiar between the functions of the jury and those of the Court. It may do away with the jury altogether, modify its constitution, the requirements of a verdict, or the procedure before it."[16]

It is difficult to understand why Ohio should be denied the right to demand that equitable relief first be obtained from a release obtained by fraud before the cause of action may be brought, in view of the fact that the federal courts still retain the division of law and equity. It is well settled that on the equity side of the federal courts there is no right to a trial by jury.[17]

LEGISLATION–SPECIAL STATUTES WITH CLASSIFICATION BY POPULATION

John Gaca, a Chicago policeman, brought an action against the City of Chicago for recovery of a $2300 judgment obtained against him for a false arrest. He recovered under section 1–15, chapter 24, of the Illinois Revised Statutes which provides that in municipalities with a population of 500,000 or more, policemen shall be indemnified for judgments recovered against them by reason of non-wilful torts committed while on duty. His recovery was affirmed by the Illinois Supreme Court. *Gaca v. City of Chicago*, 411 Ill. 146, 103 N.E. 2d 617 (1952).

Defendant, the City of Chicago, claimed that this statute contravenes Section 22 of Article IV of the Illinois Constitution, prohibiting special statutes granting any special or exclusive privileges, and that it imposes a tax upon a municipal corporation for corporation purposes, thereby violating Section 10 of Article IX of the Illinois Constitution.

The Illinois Supreme Court upheld the statute in spite of a strong dissent. The court said that the classification was reasonable since policemen in municipalities with populations over 500,000 are fraught with problems that are not found in the rest of the state. The second argument of the defendant did not merit an answer.

Municipalities were not liable at common law for the negligent acts of policemen in the performance of their duties.[1] Policemen have been individually liable notwithstanding that the tort was committed while on duty.[2]

Although the Illinois Constitution prohibits laws granting special privileges and immunities,[3] the courts have seen fit to allow a leeway from the

[16] Chicago, R.I. and P.R. Co. v. Cole, 251 U.S. 54 (1919).

[17] Parsons v. Bedford, 3 Pet. (U.S.) 433 (1830). See also, Dimick v. Schiedt, 293 U.S. 474 (1934); Liberty Oil Co. v. Condon National Bank, 260 U.S. 235 (1922).

[1] Evans v. City of Kankakee, 231 Ill. 223, 83 N.E. 223 (1907).

[2] City of Chicago v. Williams, 182 Ill. 135, 55 N.E. 123 (1899); Wisher v. City of Centralia, 273 Ill. App. 168 (1933).

[3] Ill. Const. Art. 4, § 22.