MISSOURI SECTION

COMMENTS

CIVIL PROCEDURE—STATUTORY INTERPLEADER—RIGHT TO JURY TRIAL

Plaza Express Co. v. Galloway, 280 S.W.2d 17 (Mo. 1955)

Galloway was injured when his automobile collided with a vehicle driven by a servant of the Plaza Express Company. He instituted an action for negligence against the company and then died. The administrator of Galloway's estate was substituted as plaintiff under a Missouri statute which provides for the survival of causes of action for personal injuries when the injuries did not result in death.[1] Galloway's widow, proceeding under the Missouri wrongful death statute, brought a separate action which could be maintained only if the injuries sustained in the accident did result in death.[2] Plaza Express Company then brought an interpleader action against the administrator and the widow to avoid possible double liability due to the fact that the two claims were based on conflicting allegations as to the cause of death. The Missouri Supreme Court granted the interpleader, but held that the lower court should make a binding determination of the cause of death before the trial of whichever negligence action was not thus eliminated, and that the defendants had no right to a jury trial on that issue.[3]

Interpleader is a remedy given to a holder of a "res, debt, or duty" whereby two or more third persons, rival claimants thereto, may be required to litigate their claims among themselves.[4] Traditionally, the remedy has been an equitable one which the court would grant if four requirements were met: (1) the same res, debt, or duty had to be the subject of the rival claims, (2) the claims must have been derived from a common source, (3) the stakeholder could not have any interest in the subject-matter, and (4) he could not have incurred any independent liability to any of the claimants.[5]

In 1943 Missouri adopted the more liberal, federal-type interpleader statute.[6] Now, virtually the sole prerequisite for an interpleader action is a showing that the stakeholder may be subject to double liabil-

1. MO. REV. STAT. § 537.020 (1949).
2. MO. REV. STAT. §§ 537.070-.090 (1949).
3. Plaza Express Co. v. Galloway, 280 S.W.2d 17 (Mo. 1955).
4. CLARK, CODE PLEADING § 66 (2d ed. 1947).
5. 4 POMEROY, EQUITY JURISPRUDENCE 906-14 (5th ed. 1941). See John A. Moore & Co. v. McConkey, 240 Mo. App. 198, 203, 203 S.W.2d 512, 514 (1947).
6. MO. REV. STAT. § 507.060 (1949).

ity.[7] Thus, it did not matter in the principal case that the plaintiff denied any liability whatsoever. Under the old procedure, the plaintiff could not have interpled the defendants, and the issue of cause of death could only have been tried in a negligence action at law.

The jury problem in the principal case arises because the Missouri constitutional guarantee of the right to a jury trial refers to the right as it existed at the time the constitution was adopted.[8] Since there was then no right to a jury trial in equity cases,[9] there is no present right to a jury trial in such cases. In the principal case the proceeding took the form of an equitable bill of interpleader but was used to try issues formerly triable only at law. In short, the issue is whether to treat the action as equitable, with no right to a jury trial, or as legal, with a constitutional right to a jury trial.

The problem posed by the dual aspect of the new interpleader action was solved in this case by giving the procedural nature of the proceeding precedence over the law issue being decided. On occasion, a similar technique has been used in other cases, e.g., where an equitable defense is pleaded to a legal action,[10] or where specific performance is demanded and incidental legal relief is granted,[11] and in such instances it is said that the whole case is equitable because "affirmative equitable relief" is sought.[12] This rationale is justification for the denial of a jury trial, however, only in those cases where the same result could have been obtained before the law-equity merger.[13] Examples of such cases include situations where the chancellor would grant a legal remedy as incidental relief, or where a party had the option of merging a legal right with an equitable right and enforcing both rights in one equity suit.

The conclusion of the court in the principal case does not seem consistent with the constitutional provision for jury trial. The fact remains that under the practice prior to the new interpleader statute the defendants would have had a right to a jury trial on the sole issue

7. Buerger v. Costello, 240 Mo. App. 1194, 226 S.W.2d 610 (1949); John A. Moore & Co. v. McConkey, 240 Mo. App. 198, 203 S.W.2d 512 (1947).

8. Vannoy v. Swift & Co., 356 Mo. 218, 201 S.W.2d 350 (1947); Spitcaufsky v. Hatten, 353 Mo. 94, 182 S.W.2d 86 (1944); Renshaw v. Reynolds, 317 Mo. 484, 297 S.W. 374 (1927).

9. State *ex rel.* Duggan v. Kirkwood, 357 Mo. 325, 338-39, 208 S.W.2d 257, 262 (1948); Lee v. Conran, 213 Mo. 404, 111 S.W. 1151 (1908).

10. Withers v. Kansas City Suburban Belt R.R., 226 Mo. 373, 126 S.W. 432 (1910); Shaffer v. Detie, 191 Mo. 377, 90 S.W. 131 (1905).

11. Brush v. Boyer, 104 Kan. 768, 178 Pac. 445 (1919); Hogan v. Leeper, 37 Okla. 655, 133 Pac. 190 (1913).

12. Note, 65 HARV. L. REV. 453, 455 (1952).

13. Pike & Fischer, *Pleadings and Jury Rights in the New Federal Procedure*, 88 U. PA. L. REV. 645, 654-65 (1940).

involved in this case.[14] The situation is analogous to the problem of jury trial that arose with respect to the declaratory judgment statutes. It was held in that situation that the right being adjudicated should be determinative of the right to a jury trial.[15] A new form of procedure, it was said, should not deprive a party of a right to a jury trial where he otherwise would have that right. So here, the plaintiff's new right to interpleader should not destroy the defendant's right to a jury trial.[16] It is submitted, therefore, that the decision in the principal case resulted in a violation of the defendants' constitutionally protected right to a jury trial.

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14. See Lee v. Conran, 213 Mo. 404, 111 S.W. 1151 (1908) (In a statutory action to quiet title, the court held that the right to a jury trial depended upon how the question of fact could have been raised before the statutory action was created.).

15. Pacific Indemnity Co. v. McDonald, 25 F. Supp. 522 (D. Ore. 1938), 13 So. CALIF. L. REV. 170 (1939).

16. There may a problem as to how the jury trial will be effectuated. The pre-1943 equitable interpleader action was a two-phased procedure. The first phase was a determination of whether the parties should interplead based upon the four criteria set forth in the text supported by note 5 *supra*. Once it was decided that the parties should interplead, the second phase of the proceeding was to adjudicate the dispute between the two claimants, *i.e.*, to determine who owned the cause of action. This was the end of the matter, however, because the plaintiff-interpleader was a mere stakeholder and had no further interest in the subject-matter of the suit. Under the reformed procedure, the plaintiff-interpleader may have an interest in the subject-matter of the suit, as in the principal case where any liability at all was denied, and therefore a third phase may be required. The third phase thus would be an adjudication between the owner of the cause of action and plaintiff-interpleader. The statutory language gives no indication of what mechanics should be followed in trying this third phase. It seems possible to try this issue in one proceeding along with the first two phases, or, in the alternative, to try it in a separate trial distinct from the determination of the first two issues. This problem was recognized in the dissent in the principal case, where it was suggested that "if it appears that prejudice would result to the successful party as to that issue by proceeding to have the same jury determine liability and, if so damages . . . a separate jury trial as to those issues [should] be had." Plaza Express Co. v. Galloway, 280 S.W.2d 17, 27 (Mo. 1955) (dissenting opinion).