Washington University Law Review

Volume 8 | Issue 1

January 1922

Brunsden v. Humphrey

NOTES

BRUNSDEN v. HUMPHREY.[1]

Do injuries both to the person and property, caused by one and the same negligent act, constitute but one cause of action, or is it severable so that a separate action may be maintained for each trespass? Probably no question has been more often discussed or ably argued than has this. Since the first decision involving this question to the present day there has been a conflict in opinions.

Nevertheless, there is one principle which is recognized and followed by the courts of both the United States and England; namely, that, "no man ought to be twice vexed if it appear to the court that it is for one and the same cause of action." But herein lies the difficulty and variance in decisions. Just what constitutes one cause of action?

In the case of Brunsden v. Humphrey (*supra*) the question was thoroughly discussed. The facts of the case, which are brief, are these: The plaintiff, a cabman, while driving his vehicle was run into by a cab belonging to the defendant, the collision being due to the negligence of the defendant's servant. The plaintiff had before instituted an action upon which he had recovered for damage to his cab, and then he brought a subsequent action for personal injuries sustained in the same accident. The defendant pleaded in bar the former recovery for damage to the cab. The court, however, reversed the judgment of the court below, which was in favor of the defendant, and gave judgment for the plaintiff. This case was decided on extremely technical and logical grounds. Three reasons were given for bringing separate suits. First, it was said that in order to support the action for damage to the cab, only evidence as to the physical act of destruction

1. L. R., 14 Q. B. D. 712.

and the amount of actual damage to the vehicle need be given, while in the action for damage to the person of the plaintiff it would be necessary to offer evidence founded on the statements of medical authorities. Thus the evidence used to support one cause of action would not be identical with the evidence needed for the maintainance of the other. Second, according to the established law of England, the action for personal injuries was not assignable, while actions for the damage to property could be assigned. Third, actions for injuries to the person were barred by the Statute of Limitations unless commenced within three years, while in actions for damage to property the Statute of Limitations allowed a period of six years as the maximum amount of time to elapse before instituting the suit. Although all this is true, yet, as Lord Coleridge, Ch. J., dissenting from the above decision said, it is an unnecessary distinction and contrary to justice. In his able and well written opinion he said, that, if a man was injured in the arm and the leg, it would be apparent that only one action could be maintained for damages; yet, if in addition he sustained damage to his apparel, undoubtedly the law, as it stands, would allow him to institute a separate suit for further compensation.

Even text writers agree, to a certain extent, with the decision in Brunsden v. Humphrey (*supra*), for in a well-known text upon "Judgments" it is said, "..... Damage to goods and injuries to the person, although caused by one and the same wrongful act, are infringements of different rights and give rise to distinct causes of action; and therefore the recovery of compensation for damage to the goods is no bar to an action subsequently commenced for the personal injury."[2]

There are several decisions in the United States supporting this theory among which is the case of Smith *et al.* v. Warden *et al.*[3] The facts of the case are these: The plaintiff,

2. Black, Judgments, sec. 740.
3. 86 Mo. 382.

Leonora Smith, lived across the street from the defendant's place of business. Due to the unsafe condition of a boiler used by the defendant, it exploded, throwing water, pieces of coal, and steel through the door, injuring the plaintiff who was standing in the doorway, and damaging the furniture and other personal property in the house. The defendant procured a signed statement from the plaintiff's husband acknowledging themselves indebted to him for a certain sum for the injury to the plaintiff and for the damage done to the personal property. The plaintiff, however, brought this action for the personal injuries sustained. The plaintiff had judgment in the court below and, upon appeal by the defendant, the judgment was affirmed. As may be gathered from the following opinion by the court, the distinction was recognized between actions for injuries to the person and for injury to property from the same negligent act of the defendant, for it was stated, "For these several injuries, two distinct causes of action arose; one to the husband for the injury to his furniture, etc., and the other to the wife for the injuries to her person. The receipt of the husband, offered and read in evidence, was no bar to the cause of action, thus accruing to the wife, and for which this suit was brought. But its own terms fairly construed, the receipt of the husband is limited to the payment of the actual damages to his furniture, to the payment of the doctor's bill incurred by him by reason thereof, up to that date, and in further payment of a truss to be purchased by the wife. If there is anything in the latter clause of the receipt, indicating that the same is to be in full for all damages done to the person of the wife, then the same to that extent is without consideration, and besides that, there is no evidence that the husband had any authority from the wife to settle or dispose of her right of action, growing out of the injury so done to her person."

The State of Texas has always maintained that separate suits should be brought as is shown by the case of Watson v.

Texas and Pac. Ry. Co.[4] The material facts are as follows: The plaintiff was injured while riding on a train belonging to the defendant and his stock, which he was accompanying, was killed by reason of the negligence of the train crew. The plaintiff had recovered for the value of the horses and then brought a separate suit for personal injuries, and the court held that the suit was rightly instituted and, further, that the former recovery was no bar to the second action.

Connecticut formerly followed the law in England as is shown by the case of Boerum v. Taylor.[5] The declaration in this case contained two counts; one in trespass for placing in a jug of rum certain noxious ingredients whereby the liquor was rendered valueless; and the other in case, for putting the same substance in the same jug with the intent that the plaintiff should drink thereof; and that the plaintiff drank the mixture, causing sickness and the impairment of his health. It was held by the court that these counts were essentially different, and could not be joined. Church, Ch. J., stated, "The act complained of, to be sure, is the same as described in both counts; but it resulted in very different consequences, constituting, in their nature, very dissimilar causes of action; an injury to the property, as the direct result, and an injury to the health of the plaintiff, as its indirect and more remote consequence. A recovery for one of these injuries would have been no bar against a recovery for the other, in a separate action. The evidence which would sustain the first count would fall short of sustaining the second; and this is said to be the test of determining whether causes of action are the same." But this case cannot be taken as a statement of the law in Connecticut today, for it was expressly overruled by the case of Seger v. The Town of Barkhamsted[6] wherein the decision was founded upon the "common-sense" rule as stated by Lord Coleridge, Ch. J., in his dissenting opinion in Brunsden v. Humphrey (*supra*).

4. 27 S. W. 924.
5. 19 Conn. 122.
6. 22 Conn. 290.

In the State of New York the decisions are conflicting and irregular, although the Court of Appeals in the case of Reilly v. Sicilian Asphalt Paving Company[7] strongly upheld the English rule.

In Missouri, Massachusetts, and Minnesota, the doctrine has never been declared to be the law, and there is a long line of decisions to that effect.[8] This is very ably shown by the case of Dillard v. St. L. and N. R. R. Co.[9] In this case the plaintiff alleged that he was the owner of a horse and certain harness, and that the defendant negligently ran its train of cars on and over the horse, killing it, and thus damaging him to the amount of one hundred and fifty dollars. He further alleged that the harness upon the horse was damaged to the amount of fifty dollars. In the Justice of the Peace court, the plaintiff obtained a verdict for one hundred and seventy-five dollars, and upon appeal to the Circuit Court, one hundred and seventy dollars damages. The defendant then appealed to the Supreme Court. The defendant's contention was that the Justice of the Peace court did not have jurisdiction of the said cause of action due to a statute (Wagn. Sat., 808), which provided that "justices of the peace and the circuit courts shall have concurrent jurisdiction in all actions against any railroad company in this State, to recover damages for the killing, crippling, or injuring of horses, mules, cattle, or other animals within their respective townships, without regard to their value, or the amount of damages claimed for killing or injuring the same." The court, in sustaining the defendant's contention, and in reversing the judgment of the court below, stated, "..... The action was brought to recover for a single injury. By one single act, two classes of property were injured, but the cause of action accruing to the plaintiff, by which they would recover for the entire injury, constituted

7. 170 N. Y., 40.
8. J. L. Coy v. St. Louis & San Francisco Ry. Co., 186 Mo. App. 408; Von Fragstein v. Windler, 2 Mo. App. 598.
9. 58 Mo. 355.

but one single cause of action which cannot be severed in order to give the justice jurisdiction to try the cause."

As to the splitting of causes of action where the action is upon a contractual obligation and a former recovery has been had in trover for the same goods which are now sued for in assumpsit, the deviation from the established rule is hardly negligible in the different States. This is well illustrated by the case of Union Ry. Co. v. Traube.[10] This was an action by the transportation company to recover four hundred and eleven dollars freight bill on a shipment of rice from New York to St. Louis. The answer set up a counterclaim for one thousand dollars damages for failing to deliver fifty-eight tierces of rice, a portion of a cargo ordered by the defendant. The reply admitted the failure to deliver the fifty-eight tierces of rice, but set up a judgment recovered by Traube in Circuit Court of the United States against the plaintiff for two thousand, six hundred and sixteen dollars, the value of the rice, and further claimed the judgment which was paid was an adjudication of that matter which barred the defendant from setting up his counterclaim. The court, in rendering judgment for the plaintiff, stated, "The plea of former recovery is very equitably and liberally construed by the courts, and if the subject-matter of the two suits is different, and the same question was not in fact litigated, and no evidence offered concerning it, the courts are disposed to allow the merits of the case to be investigated in the second suit. But there must, in consideration of public policy as well as settled law, be an end to litigation. The question is, whether the same cause of action has once been litigated and decided. If it has, there is an end to it, and ought to be, and it is the business of the party who brings the second action to show that the cause of action is immaterial, and if the cause be the same the judgment is conclusive, and therefore, a judgment in trover is a bar to an action of assumpsit for the same

10. 59 Mo. 355.

goods." This opinion states the prevailing law in the State of Missouri and is supported by a number of decisions.[11]

In certain cases, ignorance of existing damages may become the basis for bringing a second suit. This rule, however, is limited to actions for damages to property and in no case is the plaintiff allowed to bring a second suit for injuries to his person of which he was unaware at the time of the first suit, for he is bound to recover compensation, if at all, for his prospective or future damages in his first action. The principle upon which this rests is ably stated in the case of Moran v. Plankington,[12] wherein the following rule was stated by the court: ".....A party should not be precluded in consequence of a former action, if such action were brought in unavoidable ignorance of the full extent of the wrongs received or injuries done. Any other conclusion would be reached only through sanctioning the rankest injustice."

Gill, J., in delivering the opinion of the court in the case of Steiglider v. Mo. Pac. Ry. Co.,[13] probably gives the best reason for disallowing the splitting of causes of action. The sensibility of his argument is shown by the following extract from the opinion of the court: "The books present a variety of decisions on the general question here suggested, which, although at times apparently inharmonious, yet agree on the principle, fundamental in all such controversies, 'that one shall not be twice vexed for one and the same cause,' that there shall be but one suit for one cause of action. The policy of the rule is manifest. It protects the defendant from a multiplication of suits by a vexatious litigant, and avoids obstructing the courts with a cloud of petty cases supported by the same facts, and involving the same legal questions. The plaintiff must bring his whole complaint into court in one

11. Howard v. Clarke, *et al.*, 43 Mo. 347; Wagner v. Jacoby, 26 Mo. 532; Wheeler Savings Bank v. Tracy, *et al.*, 141 Mo. 252.
12. 64 Mo. 337. See also Morgan v. San Fran. Ry. Co., 111 Mo. App. 721.
13. 38 Mo. App. 511.

suit at one time,—that the cause of action then existing may be entirely considered and forever settled, that there may be an end to litigation. It is not meant by this rule that the plaintiff must join in one action every demand, which, under the rules of law, he might join, but it is only meant that, where he has but one cause of action, he shall have but one chance to litigate. He cannot, in an action for a wrong committed by the defendant, sue for, and recover, a portion of the damages resulting therefrom, and, then, at some future time, be permitted to complain of the same wrong, and recover other items of damage existing and known to such plaintiff at the institution of the former action."

It is apparent that the grounds upon which these decisions rest is injustice; injustice in accumulating unnecessary suits; injustice in burdening the courts with a multiplicity of suits; and, injustice to the Republic as a whole in delaying litigation of others.

M. J. D.