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Civil Procedure—Joinder of Parties—Joinder of Causes of Action

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CIVIL PROCEDURE—JOINER OF PARTIES—JOINER OF CAUSES OF ACTION—[Missouri].—A night watchman brought an action in a Missouri state court for additional wages due him under the Federal Fair Labor Standards Act. A janitress joined in his suit, for the whole amount of wages due her under the same Act. *Held*, that although there was a misjoinder of parties plaintiff and a misjoinder of causes of action, these defects were not fatal because defendant had waived them by answering over on the trial after an adverse ruling on demurrer. *Niehaus v. Joseph Greenspon's Son Pipe Corporation*.¹

When a right arising under federal law is sought to be enforced in a state court, state rules of practice and procedure will prevail in the action in the state court.² Missouri state court procedure requires that causes of action cannot be united unless each of them affects all the parties to the action.³ This procedural rule is, however, subject to the equitable right, which antedates the Missouri Code of 1849, of a few persons to sue for themselves and for other persons similarly situated in a "class suit."⁴ The above-mentioned procedural rule is also qualified by a Missouri statute which expressly permits joinder of different persons against whom the plaintiff has separate causes of action if the plaintiff is entitled to only one satisfaction.⁵ Another rule of procedure in Missouri state courts requires that parties plaintiff joining in a suit must have an interest in the same subject-matter and in the same relief.⁶ The court in the principal case correctly applied these two Missouri procedural rules relating to joinder of causes of action and to joinder of parties.

The limited power of joinder in Missouri, as outlined above, is subject to criticism. It is suggested that where there is one question of law or fact arising in both of two causes of action, the expenses of litigation would be reduced if the two causes could be united in one suit. Under the

1. (Mo. App. 1942) 164 S. W. (2d) 180.

2. A federal statute creating substantive rights, when enacted in the exercise of the authority confided to Congress, is binding upon the people and courts of each state. *McCulloch v. Maryland* (1819) 4 Wheat. 316, 405; *Smith v. Alabama* (1887) 124 U. S. 465, 473. In civil cases arising under federal laws, a state court has concurrent jurisdiction with the federal courts, unless its jurisdiction is denied in the particular legislation which creates the right of action. *Ex parte Gounis* (1924) 304 Mo. 428, 263 S. W. 988; *State of Missouri ex rel. St. Louis, B. & M. Ry. v. Taylor* (1924) 266 U. S. 200, 42 A. L. R. 1232. The state rules of practice and procedure will be followed in a state court when the court has before it a case arising under a federal statute which creates substantive rights. *Ex parte Gounis* (1924) 304 Mo. 428, 263 S. W. 988; *Minneapolis & St. Louis R. Co. v. Bombolis* (1915) 241 U. S. 211, Ann. Cas. 1916 E 505, L. R. A. 1917 A 86.

3. R. S. Mo. 1939 §917; *Liney v. Martin* (1859) 29 Mo. 28; *Repetto v. Walton* (1926) 313 Mo. 182, 281 S. W. 411.

4. *Lilly et al. v. Tobbein et al.* (1891) 103 Mo. 477, 15 S. W. 618, 23 Am. St. Rep. 887; *Newmeyer v. Mo. & Miss. Railroad Co.* (1873) 52 Mo. 81.

5. R. S. Mo. 1939 §854; *Pulitzer Pub. Co. v. Chitwood* (Mo. App. 1928) 9 S. W. (2d) 251.

6. R. S. Mo. 1939 §851; *Ballew Lumber & Hardware Co. v. Mo. Pac. Ry. Co.* (1921) 288 Mo. 473, 232 S. W. 1015.

Federal Rules of Civil Procedure the joinder of parties and the joinder of causes of action in the instant case would be proper.⁷ England and American states with recently adopted codes of procedure, like that of Illinois,⁸ would also sanction the joinder in this case.⁹ The joinder of parties and the joinder of causes of action held to be improper in the instant case do not violate the present policy of the Missouri law because, as is demonstrated in this case and in other Missouri cases, another Missouri statute¹⁰ allows improper joinder to be waived by answering over.¹¹ The Proposed General Code of Civil Procedure for the State of Missouri, prepared by the Missouri Supreme Court Committee on Civil Procedure, Plan II, Article 2, Section 9, liberalizes the requirements for joinder and would allow the joinder in the principal case.¹²

It is submitted that the present Missouri procedure is out-dated. The instant case illustrates how a substantive right can, under present Missouri procedural rules, be blocked by a procedural technicality. J. L. D.

CONSTITUTIONAL LAW—SUITS BY ENEMY ALIENS—RIGHT OF RESIDENT ENEMY ALIENS TO SUE IN OUR COURTS—[Federal].—On April 15, 1941, the plaintiff, a native born Japanese enemy alien, who has resided in this country for the past thirty-seven years, attempted to sue the owners of the vessel *Rally* in the District Court for the Southern District of California for damages for injuries sustained and also for wages due him for services rendered, as fisherman and seaman. The defendants answered and, after a state of war had been declared between the United States and Japan, moved to the action on the ground that, since the peti-

7. Federal Rule 20 (a).

8. Illinois Revised Statutes 1941, c. 110, §147.

9. 25 Halsbury's Laws of England (2 ed. 1937) 263; New York Civil Practice, Art. 24 §209; New York Thompson's Laws (1939), Part II, p. 1646; New Jersey Revised Statutes (1937) Vol. I, §2: 27-24.

10. R. S. Mo. 1939 §926.

11. *Hendricks v. Calloway* (1908) 211 Mo. 536, 111 S. W. 60; *Wolz v. Venard* (1913) 253 Mo. 67, 161 S. W. 760; *Shaffer v. Chicago, R. I. & P. R. Co.* (1923) 300 Mo. 477, 254 S. W. 257; *Hanson v. Neal* (1908) 215 Mo. 256, 114 S. W. 1073.

12. Proposed General Code of Civil Procedure for the State of Missouri, Plan II, Article 2, Section 9, reads as follows: "*Permissive Joinder*. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities."