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INTERSTATE COMMERCE IN DAMAGE SUITS

JOHN U. LOOMIS*

The program committee in assigning this subject to me referred to an article with the same title in the Journal of the American Judicature Society of February, 1946. I have drawn on that article, also an article in the Detroit Bar Quarterly of January, 1945, also a letter from a member of our own Bar to President G. R. McConnell, as well as upon my own observation and experience for the greater part of the material herein.

The so-called interstate commerce in damage suits results primarily from the Federal Employers Liability Act. That Act, as you all know, covers personal injuries and death of employees of interstate railroads. Right to recovery thereunder is based upon negligence but the defense of assumption of risk is withdrawn and the defense of contributory negligence applies only in reduction of damages. Therefore the degree of liability is high and the cases arising under the Act were dangerous from the point of view of the employer.

The venue provisions of the Act are very broad. They provide that venue may be had at the residence of the defendant, or where the accident occurred, or wherever the defendant is doing business at the time of commencing the action; also that the state courts shall have concurrent jurisdiction with the Federal Courts, and removal is forbidden.

The Supreme Court of the United States has held that these venue provisions permit the plaintiff to go shopping for the most favorable judge or jury he can find, and that he may not be enjoined from doing so. The Supreme Court of Oregon has more recently held, upon the authority of the decisions of the Supreme Court of the United States, that such an injunction may not issue even under war conditions where the bringing of such an action far from the place of injury was in effect a detriment to the public war effort.

As a result of these conditions, and others to be later referred to, litigation under this Act has been concentrated in certain localities, notably Chicago, Los Angeles and Salt Lake City, and probably in other places in other sections of the country.

The extent of this condition is illustrated by the following quotation from the article in the Journal of the American Judicature Society:

“Of 214 cases under the Federal Employers’ Liability Act pending in Chicago on August 15, 1945, 168 were from outside of Cook County, the normal territorial jurisdiction of the Chicago courts. Only 81 were from the state of

* Member of the Wyoming Bar. Address delivered at the Annual Meeting of the Wyoming State Bar at Casper, Wyoming, October 18, 1946.

Illinois. Of the remainder, 47 were from Indiana, 37 from Michigan; 16 from Ohio, 8 from Texas, 7 from California, and 18 from various other states. On January 10, 1946, The Atchison, Topeka and Santa Fe Railway Company had pending against it in the Superior Court of Chicago a total of 26 cases filed by a single Chicago lawyer in which a total of \$1,265,000.00 damages was asked. Of these cases, the cause of action in fifteen of them arose in California, eight in Arizona, and three in New Mexico. Not one of the 26 cases handled by this lawyer arose in Illinois or in any other state in which this particular carrier operates other than in the three western states mentioned, and all, except one case, were brought under the Federal Employers' Liability Act or Safety Appliance Acts. The average distance from the place of occurrence to Chicago is 1,888.3 miles, or a total of 49,096 miles in the 26 cases. All 26 cases were filed since September 18, 1945. On September 20, 1945, the claim department of the Illinois Central System reported 164 personal injury suits under the Federal Employers' Liability Act 'imported' from outside jurisdiction and pending in the Chicago courts. The Grand Trunk Western, according to the *Detroit Bar Quarterly* article previously quoted, had 21 such cases arise in Michigan during 1944, all of which were defended in Chicago and none in Michigan. This is as far as we will go with Chicago statistics, but a letter to the claim department of any other railroad operating out of Chicago will bring a similar story in response. The picture is similar, although not quite so bad, in Los Angeles, and the same holds true for various other large cities around the country."

My own experience is that no railroad employee case arising in the southern part of Wyoming during at least the last 10 years (and there have been a great many of them) has been litigated in Wyoming. All such litigated cases have been brought in one of the places above referred to.

It is obvious that such litigation does not naturally gravitate to these particular places and that on the contrary cases are solicited. I quote again from the article last referred to:

"How did all these individual plaintiffs, most of whom had never been in court before, know about the advantages of suing in these metropolitan centers? Small-town people don't rush off to big city lawyers with their land title and probate litigation; they drop in at Lawyer Jim's office across from the court house and talk over their case between cigar puffs; or they stroll over to his house on a hot evening and bring the subject up while he sprinkles his lawn. Not one in a thousand of these cases would be 'exported' to a distant city if they were placed in the hands of the hometown lawyers. Honest lawyers do not ask more than reasonable justice for their clients, and as a rule they expect to get that in their home courts. The exigencies of their practice would not permit them to pack up and journey a thousand miles to file suit in a distant court, and most of them when that is necessary enlist the services of local counsel in the distant

city to assist them. The glaring fact is that the great bulk of this comparatively profitable practice never gets into the hands of local lawyers, but is referred to the distant lawyers from the start."

My own personal experience makes it clear enough that the Wyoming cases are solicited by runners for the law firms involved, and, I am sorry to say, frequently by such lawyers themselves.

Recently a member of our own bar had an experience which clearly illustrates the situation. He had been employed in a railway employee death case and was well advanced in his handling of the matter. A runner from a law firm in Salt Lake City tried to persuade the widow to take the case from this Wyoming lawyer and place it with the Salt Lake firm on a contingent basis. When that appeared impossible the runner tried to persuade the Wyoming lawyer to go into the case in Utah on this basis and to split the fee. Our friend refused to do this but did go to Salt Lake City where he talked with the lawyers involved in order to satisfy his client. He has written the full details of what occurred to President McConnell. I might add that the Wyoming lawyer settled this case for \$30,000.00.

You will all agree with me that this condition is a public scandal in which the lawyers of Wyoming, in accordance with their high standards of professional ethics, have had no part. I quote from the Chicago Bar Record as quoted in the article in the Journal of the American Judicature Society as follows:

"From the standpoint of the Chicago bar, the acquiring of a reputation for the solicitation of cases puts the members of our profession here, good and bad, in a very unfavorable light with outside members of the profession. That so many claims for personal injuries arising in other jurisdictions should be sued on in Chicago is cogent evidence of the existence of a system of solicitation of such cases. Certainly lawyers in other jurisdictions will not be convinced otherwise.

"It may be thought that the grave difficulties encountered in the prevention of local ambulance chasing are multiplied in the case of solicitation by Chicago lawyers out of the state, but the price of making no effort to stop or punish such out-of-state solicitation is the forfeiting of the respect of lawyers who month after month witness the unhindered operation of a system which brings to Chicago injury cases that normally, in the absence of solicitation, would be filed in other jurisdictions."

But if our Wyoming lawyers do not participate in the scandal, they do unfortunately suffer from it. Our lawyers are, and have been for many years, losing valuable legal business by reason of the condition outlined.

Most of you know that I represent one of our local railroads. I am sure that I have no personal reason to wish to hold this burden-

some class of litigation in Wyoming. Nevertheless I am glad to bring the matter to your attention. I believe it is for the best interests of all concerned to stop the practice so far as possible.

Having outlined the evil I shall try to suggest such remedies as have come to my attention.

Wyoming has a statute (W. R. S. 1931, Section 32-828, 829) which reads as follows:

"32-828. *Solicitation of claims for personal injuries.* That it shall be unlawful for any persons, with the intent or for the purpose of instituting a suit thereon outside of this state, to seek or solicit the business of collecting any claim for damages for personal injury sustained within this state, or for death resulting therefrom, in cases where such right of action rests in a resident of this state, or his legal representative, and is against a person, co-partnership or corporation subject to personal service within this state."

"32-829. *Penalty.* Any person violating any of the provisions of Sec. 32-828 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than one thousand dollars, or shall be imprisoned in the county jail not less than ten days nor more than six months, or by such fine and imprisonment at the discretion of the court."

It would seem that this statute should be strictly enforced. This body may wish by resolution to make such a recommendation generally, and to suggest specifically to the incoming president that the enforcement of the statute in the particular case to which I have referred be recommended to the county attorney of the county involved.

During the last war the Director General of Railroads made the following general order (No. 18A):

"It is therefore ordered that all suits against Carriers while under Federal Control must be brought in the County or district where the plaintiff resided at the time of the accrual of the cause of action or in the County or district where the cause of action arose."

This order was held to be valid and was effective. At the last session of Congress H. R. 6345, known as the Jennings Bill, was introduced for the purpose of similarly limiting venue under the Federal Employers' Liability Act. The bill was subject to the objection that it would apparently permit a plaintiff to move to one of the places above referred to after the injury or death involved, and commence an action there. With an appropriate amendment the bill would seem to be meritorious. This meeting might wish to urge the American Bar Association and our delegation in Congress, by appropriate resolution, to support such legislation for the purpose of eliminating the existing interstate commerce in such damage suits.

It has been suggested that the policy of the Federal Employers' Liability Act is antiquated and should be superseded by a Federal

Workmen's Compensation Act applicable to interstate carriers. There are some difficulties in the way of such legislation, including the fact that the Supreme Court has held that the question of whether similar acts apply is one on which any disputant is entitled to a court trial. I have no present opinion in this matter. I think it is one which is worthy of study.
