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Jury Trial in Wyoming Cases Containing Legal and Equitable Issues

David D. Uchner

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oil and gas lease. This, the court felt showed that the parties understood that they were co-tenant owners of the mineral fee.⁴⁷ However, an examination of the records of the case will disclose that the court failed to note that, in signing the lease, the "oil and gas royalty" owners specifically disclaimed any rights beyond a cost free share of the production and stated that they were ratifying the lease solely for the convenience of the lessors. Third, if the court felt that this was a problem of construction they failed to explore the parties understanding of a "royalty" other than to speak of their conduct in signing the subsequent lease. They also failed to explore the common acceptance of the term used. Fourth, by using this rule of construction, the court not only precluded the creation of an oil and gas royalty prior to the execution of an oil and gas lease, but they also ignored the basic idea that an oil and gas royalty is an expense-free share of production which may be separately granted or reserved, with the mineral owner retaining the right to lease, explore, develop, and receive bonuses and delay rentals. The latter is the direct result of the holding that an attempted creation of an oil and gas royalty amounts to the creation of a mineral interest. Such a rule, based upon old common law thinking, fails to recognize current developments and practices, and the desirability of splitting up and separately granting and reserving the incidents of a mineral fee.⁴⁸ Finally, the holding that a grant of a royalty amounts to a grant of the oil and gas itself has the practical effect of clothing the "royalty" owner with the incidents of mineral ownership. As a result the "royalty" owner would have the right to lease his undivided share of the oil and gas and the mineral fee owner would be precluded from transferring any share of the prospective oil and gas production which does not include the right to lease. Such a result is contrary to the results of jurisdictions of far greater experience in oil and gas conveyancing⁴⁹ and it is unfortunate that the Colorado Supreme Court does not follow these jurisdictions.

SILAS R. LYMAN

JURY TRIAL IN WYOMING CASES CONTAINING LEGAL AND EQUITABLE ISSUES

Rule 38(a) of the recently adopted Wyoming Rules of Civil Procedure preserves the right to jury trial, which is impliedly guaranteed by the Wyoming Constitution.¹ The rule provides:

47. *Ibid.*

48. Jones: Non-participating Royalty, 26 *Texas L. Rev.* 569 (1948); Sullivan: Handbook of Oil and Gas Law, pp. 218, 219, 220 (1955); 3A Summers on Oil and Gas, Section 599, pp. 240, 241, 242, 243 (Perm. Ed. 1958); Walker: Developments in the Law of Oil and Gas, 25 *Texas L. Rev.* 1 (1946).

49. *Supra* notes 19 through 26.

1. Wyoming Const. Art. 1, § 9.

Right Preserved. Issues of law must be tried to the court, unless referred as hereinafter provided; and issues of fact arising in actions for the recovery of money only, or specific real or personal property, shall be tried by a jury unless a jury trial is waived, or a reference be ordered. All other issues of fact shall be tried by the court, subject to its power to order any issue to be tried by a jury or referred.²

The rule is not new, its source was Wyoming Compiled Statutes 3-2104 and 3-2105 which were superseded by the new rules.

The term "preserved" means that issues shall remain triable as they were historically, before the adoption of the rules or the code. The question is whether the issue now to be decided is one which an equity court would have decided without a jury at the time of the adoption of the state constitution, or one which would have been passed upon by a jury in a court of law.³ Historically, the usual remedy at common law was a judgment for money damages, or for the recovery of specific realty or personalty, enforced through one of the old "forms of action" of trespass, case, trover, replevin, ejectment, debt or assumpsit. If any other remedy was sought, such as injunction, specific performance, cancellation, or rescission, the party had to resort to a court of equity, on the ground that the legal relief was inadequate.⁴ Therefore rule 38 (a) does nothing more than preserve what the practice was historically.

Before the codes, often a litigant would have to be sent out of court to bring his action in another court because he sought relief that was unavailable. For example, a plaintiff might bring his claim in a court of equity and if equitable relief were not granted by the chancellor he would have to bring a new action in the law court. At his peril a plaintiff had to decide whether to sue at law or in equity and which form of action applied to his case.⁵ Often a single dispute would involve claims for different types of relief, and the parties would have to bring separate suits in different courts on different phases of the same case. The new rules have eliminated the necessity of bringing entirely separate actions. The Wyoming Rules provide for one form of action known as a civil action,⁶ not for separate actions when two types of trials or two kinds of relief are appropriate. The result is a final determination of the entire dispute in one suit, in which rights formerly equitable or formerly legal are each tried. The only problem that remains is the necessity of trying the issues that would have arisen in the law court to the jury.

The problem of legal and equitable issues in the same case has been considered by both the federal and state courts, the federal courts using the Federal Rules of Civil Procedure which are similar to the Wyoming

2. Wyoming Rules of Civil Procedure, Rule 38 (a) .

3. Clark and Moore, *A New Federal Civil Procedure*, II, 44 Yale L.J. 1291.

4. Clark, *Code Pleading*, 79 (2d Ed. 1947) .

5. Clark, *Code Pleading*, 80 (2d Ed. 1947) .

6. Wyoming Rules of Civil Procedure, Rule 2.

Rules. In *Frissell v. Rateau Drug Stores Inc.*,⁷ the plaintiff sought equitable relief by having the certificate of dissolution of the drug company set aside, and legal relief to recover damages for negligence in filling a prescription. Historically, the plaintiff would have had to bring two separate actions. The action for damages would have been tried in a common law court, while the matter of having the certificate set aside would be tried before the chancellor in a court of equity in a separate suit. The federal district court reached the same result, that would have been reached historically, but by a determination of the entire dispute in one suit. The court held that the issue of cancellation, which is equitable, should be tried first by the court, and if the plaintiff succeeded then a jury might be called to hear the demand for damages. This decision is significant because it illustrates that a party does not have to lose his right to jury trial on the question of damages simply by joining them with the cancellation issue which is equitable. However, some courts have felt that where a party seeks legal and equitable relief in respect to the same wrong, his right to jury trial is lost, holding that rights and remedies depend on whether they are *peculiarly* legal or equitable.⁸ Others have held that when a party joins legal and equitable claims he has waived his right to jury trial.⁹ In *Fraser v. Geist*,¹⁰ the plaintiff alleged the breach of a contract by which the defendant's testator agreed to set up a trust fund, the income of which was to be for the plaintiff's life. The plaintiff praying in the alternative for damages or specific performance. The court denied the plaintiff's right to jury trial holding that no cause of action for damages was stated, because the rendition of a money judgment was too speculative. It was the courts opinion that where the complaint states one cause of action giving rise to alternative remedies in law and equity and the complaint prays for relief in the alternative, the right to jury trial depends upon a prior determination as to whether *in its essence* the suit is one at law or equity. But there are no issues of fact that are *in essence* legal or equitable. The identical issue might arise in a law action or a suit of equity. Assume in such a case that the complaint did allege facts which would support either damages or specific performance. If the plaintiff prefers damages his demand for jury should be honored at the start of the trial. If he prefers specific performance the trial can proceed before the court without a jury.¹¹ Historically the plaintiff could control the mode of trial by bringing his preferred action first, and he should have the same right today.

Rights formerly equitable or formerly legal should not be lost by courts imposing restrictions on the right to jury trial. Judge Clark, in *Ring v.*

7. 28 F.Supp. 816 (W.D.La., 1939).

8. *Fitspatrick v. Sun Life Assurance Company of Canada*, 1 F.R.D. 713 (D.N.J. 1941).

9. *Di Menna v. Cooper & Evans Company*, 220 N.Y. 391, 115 N.E. 993 (1919).

10. 1 F.R.D. 267 (E.D. Pa. 1940).

11. *Morris*, Jury Trial Under the Federal Fusion of Law and Equity, 20 Texas L. Rev. 427.

Spina,¹² stated: "To say that uniting claims a party has waived his right to a jury is unsound and undesirable if not improper. It is contrary to the union and consolidation of all claims, legal and equitable in a single action which the rules not only permit but encourage."

There are several cases in which the Wyoming Supreme Court has indicated its policy on cases involving legal and equitable claims. In *Davidek v. Wyoming Investment Company*,¹³ the plaintiff brought an action for ejectment, and the cancellation of deeds, and therefore contended that she had a right to trial by jury. Although it was an equitable suit, because it was first necessary that the decree of distribution in an estate be set aside, the court stated:

In determining whether a particular proceeding is legal, so that a right to jury trial exists with respect to it, or whether it is equitable, so that no such right of jury trial exists with respect to it, the courts are not bound by pleadings or the form of the action. The right must be determined by the real meritorious controversy between the parties, as shown by the whole case. If it is "essentially" of an equitable nature, or if some "essentially" equitable remedy is invoked, no right to jury trial exists. Otherwise the right to jury trial does exist.¹⁴

Although there is no question that the result is sound the court sought an arbitrary rule as to the question of the right to jury trial. Equity once having obtained jurisdiction on the issue of cancellation of the deeds could go on to give legal relief on the matter of ejectment. Historically many legal claims were actually disposed of in equity.¹⁵ The court maintained that the answer to the problem depends on the primary relief which the party seeks. A decision based on whether the action is *in its essence* or is *peculiarly* law or equity is no answer to the question.¹⁶ Likewise, it would seem that trying to determine whether an action is *essentially* legal or equitable as set out in the *Davidek* case does not aid in reaching a satisfactory solution to cases containing mixed issues. Such terms are only misleading; rights formerly equitable or formerly legal should be enforced by a court or jury depending upon the setting in which the issues are framed.¹⁷ Equitable relief is not incidental to legal relief nor is legal incidental to equitable relief. The Wyoming Court had stated previously that issues are *neither legal nor equitable*.¹⁸

In cases which are equitable but contain incidental legal relief, the "clean-up doctrine" is applicable, as was mentioned briefly in connection

12. 166 F.2d 546 (2d Cir. 1948).

13. 77 Wyo. 141, 308 P.2d 941 (1957).

14. 308 P.2d at 946.

15. Clark, Code Pleading (2d Ed. 1947).

16. Morris, Jury Trial Under the Federal Fusion of Law and Equity, 20 Texas L. Rev. 427.

17. Pike and Fischer, Pleadings and Jury Rights In the New Federal Procedure, 88 Pa. L. Rev. 645.

18. Goodson v. Smith, 69 Wyo. 439, 243 P.2d 163 (1952).

with the *Davidek* case. The Wyoming Supreme Court has declared that there are cases in which it may administer complete relief between the parties, even if legal rights are involved which would otherwise not be within range of its authority.¹⁹ Once equity is invoked, the court has power to determine all rights and claims, to prevent multiplicity of suits.²⁰

One of the most common situations in which the problem of mixed legal and equitable issues arises is when the defendant asserts an equitable defense. In cases in which the plaintiff sues on a legal claim, and the defendant asserts an equitable defense then the court should order separate trials.²¹ Historically, the plaintiff would have sued in a law court and the defendant would have brought a separate action in chancery to enjoin the enforcement of the legal action on the grounds of fraud, mistake, or other equitable grounds of relief. If he won in equity that ended the matter; if he lost, the law case proceeded. Today, it is within the power of the court to first try and determine the issues upon the equitable defense and then if that does not settle the matter submit the case to the jury to determine the legal issues.²²

Another occasion in which the problem of mixed issues might arise is in an action to foreclose on a mortgage and recover the money claimed to be due on a note. This was the problem in *Baldwin v. McDonald*,²³ and although the demand for jury trial was not filed on time, the court declared that a party would be entitled to a jury trial as if the action were one for the recovery of money only. Wyoming Compiled Statute 3-703 provided for the right to jury trial in a situation like the *Baldwin* case. This statute was included in Article 7, Chapter 3 which was superseded by the new Wyoming Rules. The elimination was apparently unintentional, but in view of the *Baldwin* case, the same result will be reached without the special statute.

The Wyoming Rules leave a great amount of discretion to the court in solving problems which arise in cases containing mixed legal and equitable issues. Rule 39(a) provides that when a jury has been demanded the action will be docketed as a jury action. It further states that if the court upon motion or of its own initiative finds that the right to jury of some or all of the issues does not exist, it may refuse to allow a jury. Just as they were historically, purely equitable issues are tried by the court, and the legal issues by the jury. The court does not violate Rule 39(a) by ordering equitable issues to be disposed of first and then calling in a jury on the legal issues, if any are found.²⁴

19. *Burns v. Corn Exc. Bank of Omaha, Nebr.*, 33 Wyo. 474, 240 Pac. 683 (1925); *Lasick v. Wimpenney*, 73 Wyo. 345, 278 P.2d 897 (1955).

20. *Yellowstone Sheep Company v. Ellis*, 54 Wyo. 288, 96 P.2d 895 (1939).

21. *Liberty Oil Co. v. Condon National Bank*, 260 U.S. 235, 435 S.Ct. 118, 67 L.Ed. 232 (1922).

22. *Walbel v. Steinhoff*, 25 Wyo. 227, 168 Pac. 251 (1917).

23. 24 Wyo. 108, 156 Pac. 27 (1916).

24. 30 F.Supp. 163 (D. Conn. 1939).

*Ford v. Wilson and Company*²⁵ was a very complicated case of mixed legal and equitable issues in which the Federal District Judge stated:

I rule that all issues which are common to the legal causes of action and to the equitable cause started in the second count shall be tried together, the legal issues, of course to the jury and the equitable issues to the court; and that all equitable issues which do not pertain to the legal causes shall be tried to the court immediately following the jury trial.

This ruling will have practical application as follows:

On the day of trial the parties will proceed precisely as though trying to the jury both the first count and the second count viewed as charging actionable fraud, and the rulings on the evidence will be made as though no other issues were before the court. The court, however, will accept all evidence which is received in the jury trial for any proper bearing it may have upon the second count viewed as a cause of action in equity. After the jury has been charged and has retired to deliberate, the court will proceed to hear additional evidence on the equitable cause stated in the second count. There will be neither need nor permission to reiterate evidence already received in the jury trial; but any evidence theretofore offered and excluded in the jury trial may again be offered for its bearing on the second count viewed as a cause of action in equity.²⁶

If a complaint does give rise to remedies in law and equity as in the *Ford* case, the complaint cannot be essentially one or the other, and a mixture of issues should not prevent the court from reaching a sound result.²⁷ Rule 42 (b) of the Wyoming and Federal Rules specifically gives the power to the court to prevent prejudice by using its powers to marshal the trial.²⁸ It provides:

Separate Trials. The court in furtherance of convenience or to avoid prejudice, may order a separate trial of any claim, cross-claim, counter-claim or third party claim, or any separate issue of any number of claims, cross-claims, counterclaims, third party claims, or issues.²⁹

The use of this rule removes the expensive and time losing requirement of two separate suits to give a party his jury on legal issues.³⁰

What should the Wyoming rule be? The answer to the question of the right to jury trial in Wyoming cases containing legal and equitable

25. *Ibid.*

26. 30 F.Supp. at 166.

27. Pike and Fischer, *Pleadings and Jury Rights In the New Federal Procedure*, 88 Pa. L. Rev. 645.

28. The Circuit Court of Appeals for the Ninth Circuit, in the case of *Bruckman v. Hollizer*, 152 F.2d 730 (9th Cir. 1946), avoided prejudice and reached a sound result by using its powers to marshal the trial under Rule 42(b). The plaintiff sought damages and an accounting for an infringement, which is equitable relief. The court ordered separate trials of the claims. First, it ordered a separate trial by jury on the issue of infringement, the amount of damages were decided, and then the court determined the equitable issue of accounting.

29. Wyoming Rules of Civil Procedure, Rule 42 (b).

30. *Bruckman v. Hollizer*, 152 F.2d 730 (9th Cir. 1946).

issues should be based upon the nature of the issues and the particular situation before the court, keeping in mind what the result would have been historically and to the policy that favors the protection of the jury trial right.³¹ When a plaintiff has prayed alternatively for legal or equitable relief he should have the obligation to state his preference when a jury trial is demanded. If he prefers the legal remedy the jury should be called at the start of the trial, and the case will proceed on the legal issues. If the legal theory fails on a legal ground then the court may dismiss the jury and decide the equitable question.³²

When cases arise in which the plaintiff is seeking legal and equitable relief there are two choices: (1) The court may hear the equitable issues along with consideration of the legal issues by the jury. After which the court may enter the proper judgment on the various findings.³³ (2) If the court does not wish to try the questions concurrently it might follow the procedure used by some of the federal decisions mentioned, including the *Ford* case. The trial of the equitable issues, whether raised by the plaintiff or the defendant on an equitable defense, may be tried entirely apart from the trial of the jury issues.

Thus, under such practice, the historical right to jury trial will be preserved without prejudice to any of the parties to the litigation.

DAVID D. UCHNER

APPEALS FROM A PLEA OF GUILTY IN JUSTICE COURT

At common law there was no right of appeal from a plea of guilty in any court. Blackstone said that the kind of penalty, if not the degree, was ascertained for every offense, and neither a judge nor a jury could alter that penalty.¹ Since all persons were presumed to know the law and the sanctions for violating the law, a man who admitted the facts as charged, by pleading guilty, was not aggrieved and could not appeal. On the other hand, if a party had pleaded not guilty and was aggrieved by some irregularities in the trial or judgment, he could sue out a writ of error based on "notorious mistake."²

In the United States the federal courts follow the common law rule to some extent. While appeals from a justice court are not involved, the general rule in federal courts is that if the defendant has pleaded guilty in the trial court, he can only appeal if collateral issues are raised.³ Some

31. Clark, Code Pleading §§ 110-113 (2d Ed. 1947).

32. Morris, Jury Trial Under the Federal Fusion of Law and Equity, 20 Texas L. Rev. 427.

33. Bruckman v. Hollizer, 152 F.2d 730 (9th Cir. 1946).

1. Blackstone, Commentaries, § 377.

2. Id. at § 391.

3. Braffith v. The People of the Virgin Islands, 29 F.2d 740 (3d Cir. 1928).