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## Practice in Justice's Court Joining or Splitting Causes of Action

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payment. Needless to say, the requirement of such action from the purchaser is utterly impracticable. It is also submitted that the relief afforded a subsequent purchaser by the Virginia statute is not as desirable as that given in the Mitchell Case, since, in Virginia, the subsequent purchaser upon learning of the prior unrecorded conveyance merely receives a lien in equity on the property purchased, for so much of his purchase money paid before he received notice, but the Mitchell Case lets him keep his bargain and only makes him responsible to the owner of the prior unrecorded conveyance for the amount of the purchase price still due. The Supreme Court of West Virginia could then, no doubt, by a reaffirmance of the doctrine of "complete purchaser" as laid down in the Mitchell Case, go even farther in protecting a subsequent purchaser, who has paid only part of the purchase price, then he receives under the Virginia statute. In thus tempering the common law doctrine the Court could reach a more desirable end than that afforded in Virginia and, a *fortiori*, more desirable than the doctrine as laid down in the recent United Fuel Gas Co. Case.

—H. R. A.

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PRACTICE IN JUSTICE'S COURT JOINING OR SPLITTING CAUSES OF ACTION.—The plaintiff brought two actions against the defendant, before a justice of the peace, for \$498.50, in the aggregate, the purchase price of flour. In the first action, the plaintiff recovered \$276.00, for flour sold and delivered from January 2 to January 18, 1924, on bills payable February 1, 1924. To the plaintiff's second action, on bills due December 1, 1923, and January 1, 1924, for flour sold and delivered during November and December, 1923, and also on bills for sales and deliveries on January 19 and 21, 1924, the defendant pleaded part of §48 c. 50, W. VA. CODE, quoted below, as a special plea in bar. Judgment was given for the plaintiff, and was affirmed on appeal to the circuit court. The defendant brought error. *Held*, judgment affirmed. *Clay v. Meadows*, 130 S. E. 656 (W. Va. 1925).

This case seems to have been decided upon the doctrine of *stare decisis*; for it is admitted, in the opinion, that "individual members of the court entertain the view that

the decisions in the *McClagherty* and *Wood* Cases, [*infra*,] construing the statute, are not consonant with correct principle; but feel that, inasmuch as these rulings have been accepted as the law, less harm will be done by approving than disapproving them." It is submitted that the decision puts a strained construction on the statute, which provides that "when the plaintiff has several demands against the same defendant founded on contract, express or implied, he must bring his action for the whole amount due and payable at the time such action is brought, whether the demands be such as might have been heretofore joined in the same action or not." W. VA. CODE, c. 50, §48. The court reaffirmed the holding in *Grocery Company v. McClagherty*, 46 W. Va. 419, 33 S. E. 252, which adjudged, in effect, that the statute means what it says only when the aggregate of the several demands does not exceed the jurisdiction of the justice of the peace. It would seem that this interpretation of the statute is inconsistent with the legislative intent, which, it may be taken, was to minimize contentious and protracted litigation by compelling the parties thereto to submit all their existing disputes, arising out of contract, to adjudication in one proceeding, if recourse be had to the justice's court, which admittedly is the forum of most petty legal contentiousness. The Court, in the present holding, goes far beyond the decisions in the two earlier West Virginia cases, which are relied upon as authorities. *Grocery Company v. McClagherty*, 46 W. Va. 419, 33 S. E. 252; *Bank v. Wood*, 60 W. Va. 617, 55 S. E. 753. They were both suits brought on promissory notes, and unquestionably such notes constitute separate causes of action, especially where, as in the *Grocery Company* Case, for example, the second note is given subsequently to the first, with a later date of maturity, and for an indebtedness not yet incurred at the time of execution of the first instrument. *Staane v. Mutual Loan, etc., Co.*, 102 Ga. 597, 29 S. E. 452; *Nathan v. Hope*, 77 N. Y. 420; *Presstman v. Beach*, 61 Md. 203; See also 1 C. J. 1115. In the present case, there was no question of a note or notes, but merely a claim for successive deliveries, and the bills for all of which were due and payable at, or before, the time of bringing the first action. Nevertheless, the Court considers these bills for flour maturing at

different times, it is true as constituting several distinct causes of action. But after the maturity of the various bills, why should they be not treated as mere parts of one cause of action, in the same manner as the several items of the "running", or continuous, or book, account of a merchant, or a physician, or an apothecary? *Markham v. Middleton*, 2 Str. 1259, cited in *Stevens v. Lockwood*, 13 Wendell (N. Y.) 644, 28 Am. Dec. 492. Judge Cooley has said that, if two or more bills, payable on different dates, form one cause of action after maturity, they are again divided, when each separately is barred by the statute of limitations. *Stickel v. Steel*, 41 Mich. 350, 1 N. W. 1046. But is that fact decisive as to the problem under consideration? The family physician's charges, for instance, are regarded as a "running" account, giving rise to a single cause of action, though the individual items may be for medical attendance upon more than one member of the household, and though often as extensive a period as six months, a year, or longer, intervenes between his ministrations; and yet each item of the physician's bill is separately barred by the statute of limitations. 1 R. C. L. "Actions", §34, at page 358, citing *Oliver v. Holt*, 11 Ala. 574, 46 Am. Dec. 228, and *Stevens v. Lockwood*, *supra*. There is a conflict of authority as to whether the doctor's claims give him more than one cause of action. *Potter v. Harvey*, 34 R. I. 71, 82 Atl. 812. But by the numerical weight of authority, he has but a single cause of action. 1 C. J. 1113; 1 R. C. L. 358, notes 9 and 11. The compensation for the physician's services, it is true, is usually due at once, while, in this case, the flour was sold on credit; but nevertheless, the physician's remuneration, in consequence of his skill being invoked intermittently, becomes payable on different dates, and the separable items are barred separately; and so, likewise, it is in the case of flour, sold at intervals, on terms of credit accruing on different dates. It is submitted that no distinction, in this respect, should be made between the flour claim and the "running" account of the merchant, doctor, etc. Although it seems that the decision is "not consonant with correct principle", nevertheless, there is much to be said in its favor. The case represents the accepted law, and is merely a quite broad extension of the rule of construction laid down in the earlier cases in this

jurisdiction, and which perhaps it would be unwise to disturb. Apparently, the case is in accord with the numerical weight of authority in other jurisdictions, and it has the support of one, at least, of the ablest jurists that the United States has produced. Cooley, J., in *Stickel v. Steel*, *supra*. Another argument in favor of the existing rule, presented by the Court in the Grocery Company Case, is that the law requires nothing unreasonable; yet, if the plaintiff brings his action before a justice of the peace, and is required to include all his demands, and if they are in excess of the jurisdictional limits of the justice as to amount, then the law makes the plaintiff do the legally impossible, or else forfeit all his demands exceeding in the aggregate \$300.00. It may be contended, also, that the effect of the literal enforcement of the statute would be to drive the plaintiff into the circuit court, where the rules of the common law govern, and there he would not be required to join all his claims in one action, but might institute as many proceedings as he has causes of action. However, it is submitted that a sufficient answer to this contention is found in the consideration of what may be reasonably taken as the intention of the legislature; namely, to reduce litigation to a minimum, and as the lawmaking body doubtless was fully cognizant of the fact that parties are most litigious in the justice's court, it doubtless was seeking to limit suitors to one action in that forum. If the legislature intended an exception to be made in cases where the aggregate of the plaintiff's claims exceeded the jurisdiction limits of the court, it is not unreasonable, it is suggested, to think that the statute would have so provided specifically. It is true that at common law the plaintiff was not required to bring in all his demands, and that it is not necessary for him so to do, in the circuit court; yet, if he does seek his relief in the circuit court, it is quite natural that he should unite all his claims against the same defendant in one action. In conclusion, it may be added that the fact that the remedy before a justice of the peace is more speedy and less expensive than in a court of general jurisdiction scarcely warrants the construction that has been put upon the statute.

—G. D. H.