"IROIJ" ON JEBDRIK'S SIDE, et al., Appellants

v.

JOAB JAKEO, Appellee

Civil Appeal No. 75

Appellate Division of the High Court

April 24, 1972

Appeal from judgment on verdict following jury trial relating to ownership of land in Laura, Majuro Atoll. Judgment was reversed on basis of improper selection of jury and improper trial procedure.

1. **Courts—Jurisdiction**

   The question of jurisdiction is the threshold inquiry in every case, thus, before a court can begin to consider the merits of the case it must first be sure that it has authority to do so.

2. **Courts—Jurisdiction—Amount in Controversy**

   The lack of a minimum amount in controversy failing to confer jurisdiction is a defense that may be made by the parties.

3. **Courts—Jurisdiction—Amount in Controversy**

   The question of a lack of minimum amount in controversy must be determined even when it has not been suggested by the parties.

4. **Courts—Jurisdiction—Amount in Controversy**

   A good faith claim is the general measure of the amount in controversy, but once the court decides not to accept this claim without proof, the claimant must establish that the minimum amount is actually at stake.

5. **Courts—Jurisdiction**

   A court has the jurisdiction to decide if it has jurisdiction.

6. **Courts—Jurisdiction**

   In questioning the fulfillment of statutory requirements, the court is obligated to proceed on the assumption that it lacks jurisdiction until jurisdiction is affirmatively demonstrated to exist.

7. **Courts—Jurisdiction—Failure to Establish**

   Once a court has decided that the statutory jurisdictional requirements have not been met, it must dismiss the cause of action and this is true no matter at what stage the proceedings might be.

8. **Courts—Questions Considered**

   Statutory questions are for the court, not the jury, to decide.

9. **Jury—Selection—Disqualification**

   For a court to accept a juror whose *iroij erik* was counsel for one of the parties was reversible error.

10. Jury—Selection—Disqualification

Jurors should be thoroughly impartial as between the parties.

11. Civil Procedure—Trial—Jury Trial

The right to unbiased and unprejudiced jurors is an inseparable and inalienable part of the right to trial by jury guaranteed by law.

12. Jury—Selection—Disqualification

A state of mind in a juror evincing bias for or against either party is a ground for challenge.

13. Jury—Selection—Disqualification

Bias or prejudice for or against a party disqualifies one as a juror and constitutes cause for challenge.

14. Jury—Selection—Disqualification

Bias may be implied because of consanguinity or affinity with either of the parties.

15. Jury—Selection—Disqualification

Grounds for challenge to a juror include, but are not limited to, the relationship of guardian and ward, attorney and client, master and servant, landlord and tenant, and having been a party adverse to one of the parties in a different action.

16. Civil Procedure—Trial—Jury Trial

It is the affirmative duty of the trial court to take positive action to ascertain the existence of improper influences on jurors' qualifications and to take whatever steps are necessary to diminish or eradicate such improprieties.

17. Civil Procedure—Trial—Jury Trial

It is the province of the court, the trial judge, to determine and decide questions of law presented at the trial, and to state the law to the jury, and it is the province of the jury to decide or determine the facts of the case from the evidence adduced, in accordance with the instructions given by the court.

18. Civil Procedure—Trial—Cross-Examination

Under Trust Territory Rule 12(e), Rules of Criminal Procedure, also applicable to Civil Procedure, cross-examination is solely limited to its relevancy to the issues.

19. Civil Procedure—Trial—Cross-Examination

The propriety of a question on cross-examination does not depend upon the point having been raised on direct examination.

20. Courts—High Court

The decisions of the Appellate Division of the High Court constitute the "supreme law" of the Trust Territory.

21. Courts—High Court

The Trial Division of the High Court is bound by the decisions of the Appellate Division.

22. Courts—High Court

Neither the Trial Division, nor a jury, can change the rule of law as announced by the Appellate Division, that can only be done by the Appellate Division itself or the Congress of Micronesia.

Before BURNETT, *Chief Justice*, BROWN, JR., and TURNER, *Associate Justices*

BROWN, *Associate Justice*

This is an appeal from a judgment on a verdict following the first and, to date, the only jury trial ever to take place in the Trust Territory. The complaint alleged that the defendant sold to Henry Samuel the *watoes* Mwinbwijenro and Likinwelokeen, both located in Laura, Majuro Atoll. It is alleged that the sale of the said *watoes* was without the knowledge and consent of eight *iroijs* on Jebdrik's side, and certain other persons, and, was therefore illegal, being contrary to this court's opinion in Civil Action No. 1.

The pre-trial order set forth that the sole issue in the case was whether or not the defendant had the right to dispose of any interests he may have had in lands on Jebdrik's side of Majuro Atoll without first obtaining the approval of those who hold *iroij lablab* powers over said property.

The first error on the part of the trial court, to begin at the beginning, is that the Court failed to determine whether it had jurisdiction under the authorizing jury trial statute (5 T.T.C. 501(2)) to call a jury. Under the statute, a jury is permissible when "the amount claimed or value of the property involved exceeds one thousand dollars." In this case the plaintiff sought to set aside a transfer of an interest in land by the defendant to the defendant's counsel. The only indication of the value of the interest attempted to be transferred was an agreement of the parties reflected in the pre-trial memorandum that:—

"the value of the land involved in this action exceeds $1,000.00."

In the Federal System, establishment of a minimum amount in controversy is one requirement mandatory in invoking the Court's jurisdiction in diversity suits. A parallel can be drawn between this requirement and the in-excess of $1,000 minimum amount in controversy requirement of Trust Territory Code, Section 501(2)A, establishing the right to a jury trial. The same questions of law may be applicable.

[1–3] The question of jurisdiction is the threshold inquiry in every case. (*Warner v. Territory of Hawaii*, 206 F.2d 851, 852.) Before the Court can begin to consider the merits of the case it must first be sure that it has authority to do so. The lack of a minimum amount in controversy failing to confer jurisdiction is a defense that may be made by the parties. This question must be determined even when it has not been suggested by the parties. (*Employers Casualty v. Kline Oldsmobile*, 210 F.Supp. 269, 270.)

[4, 5] When a statutory essential is lacking, it cannot be conferred or supplied by consent of the parties. Though both parties agree that the amount in controversy exceeds the amount necessary to fulfill statutory requirements, the court is not thereby bound to accept this assertion without proof. (*Eldridge v. Richfield Oil Corp.*, 247 F.Supp. 407 at 411; *Employers Casualty*, supra, 269.) The parties cannot fulfill the requirements simply by expressing their confidence that they have been met. (*Barkhorn v. Ablib Assoc. Inc.*, 345 F.2d 173, at 174.) The good faith claim is the general measure of the amount in controversy, but once the court decides not to accept this claim without proof, the claimant must establish that the minimum amount is actually at stake. The court has the duty to establish that the statutory requirements have been met, even if this issue is not contested by the parties. That the court is obligated to be sure that these requirements have been met, rather than just having authority to inquire, is well established.

(*Warner*, supra, 852; *Barkhorn*, supra, 174; *U.S. v. General Insurance Co. of America*, 247 F.Supp. 543, 544; *Longview Tugboat Co. v. Jameson*, 218 F.2d 547, 548.) It is also well established that the court has the jurisdiction to decide if it has jurisdiction. (*Kuenstler v. Occidental Life*, 292 F.Supp. 533, 535, 536; *Swanson v. U.S.*, 224 F.2d 795, 800.)

[6, 7] In questioning the fulfillment of statutory requirements, the court is obligated to proceed on the assumption that it lacks jurisdiction until jurisdiction is affirmatively demonstrated to exist. (*General Insurance Co. of America*, supra, 544.) Once the court has decided that the statutory requirements have not been met, it must dismiss the cause of action in Federal Courts or, in the Trust Territory, dismiss the jury and proceed to trial as any other non-jury case. This is true no matter at what stage the proceedings might be. Also, it is true whether the motion was made by the parties or by the court sua sponte. (*Harmon v. Superior Ct.*, 307 F.2d 796.) This may be done without a formal trial, on affidavits, and even if a jury trial has been demanded. (*Eldridge*, supra, 410.) The action may be dismissed, even though the formal allegations are proper, the cause has been tried, and judgment has been entered. (*Smith v. Sperling*, 237 F.2d 317, 321.)

[8] Statutory questions are for the court, not the jury, to decide. (*Taylor v. Hubbell*, 188 F.2d, 106 at 109.)

Passing the failure of the Court to determine jurisdiction for a jury trial, we must next examine how the jury was selected. Again the Court should have, but did not, follow the statute. Qualification, or more accurately, disqualifications of jurors, are set forth in 5 T.T.C. 503 and 504. The record shows not a single inquiry was made by the Court or counsel as to whether the prospective jurors were qualified under the statute to serve. As a sidelight, one juror was excused by the Court because he was "too young." The

statute, however, permits anyone age 18 or over to serve. This venireman's age was not asked.

The only qualifying questions the Court asked was whether the prospective juror was related to any of the parties. Henry Samuel, counsel for the defendant, was the admitted *iroij erik* of one of the jurors. We consider appellant's written argument to be a significant condemnation of the Court's failure to obtain a fair and impartial jury.

Appellant wrote:—

"The majority members of the jury panel consist of those who were known to be under the leadership control of *Iroij erik* Henry Samuel and in consideration of our Marshallese custom it is difficult for anyone to refuse the decision of the *Iroij* but to comply with whatever he decides good in mind."

[9] Of all districts in the Trust Territory, the power of royalty is perhaps the greatest in the Marshall Islands District. For a court to accept a juror whose *iroij erik* was counsel for one of the parties was reversible error in itself.

[10–15] The prospective jurors were further examined and it developed that of the six jurors finally selected, at least four were related to one of the parties. It is fundamental that jurors should be thoroughly impartial as between the parties. The right to unbiased and unprejudiced jurors is an inseparable and inalienable part of the right to trial by jury guaranteed by law. A state of mind in a juror evincing bias for or against either party is a ground for challenge. In other words, bias or prejudice for or against a party disqualifies one as a juror in such case and constitutes cause for challenge (31 Am. Jur., Jury, Sec. 171). Clearly, bias may be implied because of consanguinity or affinity with either of the parties. Other grounds for challenge include, but are not limited to, the relationship of guardian and ward, attorney and client, master and servant, landlord and tenant, and having been a party adverse to one of the parties in a different action.

[16] It is noted that counsel for both parties had no formal legal training, and it was incumbent upon the court, under those circumstances, to defend scrupulously the rights of all parties and to dismiss any juror who evinced possible bias for or against any party. In our opinion, it constituted reversible error for the court not to have done so. It is the affirmative duty of the trial court to take positive action to ascertain the existence of improper influences on jurors' qualifications and to take whatever steps are necessary to diminish or eradicate such improprieties. (*Silverthorne v. U.S.*, 400 F.2d 627.)

Then, before the taking of any testimony, the court advised the jurors, after they had been sworn, that the plaintiffs claimed that the defendant was without power to dispose of any interests he held in the land, without approval, and was contrary to the holding of the court in Civil Action No. 1, which the court stated was the "beginning of this case." This statement could have served only to completely confuse the jury. Undoubtedly, the jurors had neither read nor had explained to them the holding of Civil Action No. 1; and it would have been error for them to have studied or discussed that case, for that would call upon the jury to decide a question of law rather than a question of fact and thus require the jury to invade the province of the court.

To compound the error, the court then permitted witnesses to answer questions based upon Civil Action No. 1.

[17] It must be remembered that in cases tried before a jury, the court and the jury each have separate and distinct functions, which may be summed up in a few words. It is the province of the court, that is, the trial judge, to determine and decide questions of law presented at the trial, and to state the law to the jury, and it is the province of the jury to decide or determine the facts of the case from

the evidence adduced, in accordance with the instructions given by the court (53 Am. Jur., Trial, Sec. 156).

Even if this had been a lawfully selected jury, it would have been too much to expect an intelligible verdict in the light of the trial court's instructions. The record speaks for itself, but there are some special examples to be observed.

When it gave the "instructions", the court read extensively from generalized form instructions without making them applicable to the case before it.

The trial judge told the jury (Tr. p. 48) that "unless you are otherwise instructed . . . the evidence in the case always consists of:—

"(a) Judicial notice by the Court." (But none was taken.)

"(b) All exhibits received in evidence." (But none were offered or received.)

"(c) All facts which may have been admitted or stipulated." (There were none except the improper stipulation as to jurisdictional amount.)

The judge also told the jury that "I occasionally ask questions of a witness." and that they were "at liberty to disregard all comments of the Court." The record shows no questions asked nor comments made.

It is recognized a court's jury instructions are difficult for a jury to follow at best, but when there are lengthy, generalized and non-pertinent "lectures" on the law of jury trials, the court opens the door to utter confusion and turns what should have been judicial progress in the Trust Territory into complete disaster.

And for good measure the trial court told the jury "any evidence to which an objection was sustained (there were none made and none sustained) and any evidence ordered stricken by the Court must be entirely disregarded." No evidence was ordered "stricken."

The Court did, however, order a question stricken for the reason "this is recross-examination and that question

was not brought out on direct examination and it is improper." (Tr. p. 29.) Another time (Tr. p. 39), the Court admonished counsel that "Cross-examination is restricted and confined to the matters testified to on direct examination."

[18, 19] The statement is, of course, completely erroneous under Trust Territory procedural rules. This is the second time on appeal we have noted the same error by this trial judge. In *Binni v. Mwedriktok*, 5 T.T.R. 373, this Court pointed to "a serious procedural error" occurring when the Court cut off cross-examination. It was explained that under Trust Territory Rule 12(e), Rules of Criminal Procedure (also applicable to Civil Procedure), cross-examination "is solely limited to its relevancy to the issues" and that its propriety does not depend upon the point having been raised on direct examination.

What has been said in this opinion relate primarily to mistakes made in the conduct of the trial. We may not conclude without explaining to the parties—sixty land interest holders on "Jebrik's side" of Majuro Atoll were listed as plaintiffs—and to their counsel for their future guidance that the law of the case as revealed in the record was either incomplete or totally erroneous.

We agree that the only instruction to the jury on the law of the case constituted reversible error because it invited the jury to decide questions of law. What is now emphasized is that what the jury heard both from the Court and from counsel was erroneous law.

[20–22] The trial judge, if this case had been a non-jury one, did not have the lawful right to enter a judgment contrary to the law announced by the Appellate Division in *Jatios v. Levi*, 1 T.T.R. 578, which was the final determination of "Civil Action No. 1", i.e., *Levi v. Kumtak*, 1 T.T.R. 36. Although the trial court was bound by the Appellate decision, the jury was asked to either reverse the

appellate court or agree with its decision. This obviously was contrary to law. The decisions of the Appellate Division constitute the "supreme law" of the Trust Territory. 6 T.T.C. 357. The Trial Division of the High Court is bound by the decisions of the Appellate Division. Neither the court, nor a jury, can change the rule of law announced by the Appellate Division. Only that Court itself or the Congress of Micronesia can change the law as decided. This principle of law is fundamental in common law jurisprudence. For cases holding lower Federal Courts are bound by U.S. Supreme Court decisions, see: *Penfield Co. v. Securities and Exchange Commission*, 143 F.2d 746, 749; 154 A.L.R. 1027; *Dickman, Wright & Pugh v. Weade*, 168 F.2d 914.

The rule in the Trust Territory is the same. (*Elechus v. Kdesau*, 4 T.T.R. 444, 450.)

The rule whereby the decision of a court is binding upon an inferior court is known as the doctrine of stare decises. It is as binding upon the courts of the Trust Territory as any other common law rule in the absence of statutory change. For the trial judge to even consider a decision contrary to the rule of law affirmed on appeal of Civil Action No. 1, was reversible error and to have a jury consider a decision the court itself could not entertain does violence to the law applicable to a jury system.

To reaffirm the early opinion that the law set forth in Civil Action No. 1 was valid then and is sound today would unduly lengthen this opinion. But we must give brief consideration to the theory on which this case was tried—i.e., that the "practice" of land transfers on "Jebrik's side" has changed the "customary law, as set out in Civil Action No. 1" so that it no longer is binding. (Tr. p. 19.) If the Court had properly instructed the jury it might have found as a fact, if there had been any evidence to this effect, that the custom set forth in Civil Action No. 1 was no longer

followed. Then this Court might have sustained the jury finding of fact and set aside application of its former decision to similar facts.

But this is all theory and speculation and therefore meaningless. No proof was offered by the defendant that the custom has been changed in practice. Defense counsel alleged in his amended answer what purported to be examples of transfers contrary to custom. The trial court should have taken judicial notice that some of these "examples" were incorrect. For example, some of the alleged sales were in fact leases and in one instance a transfer was approved by the Japanese government, which at one time held *iroij lablab* powers, along with others, after "Jebrik's" death. No evidence whatever was offered on the examples listed in the answer.

As a matter of law, the defendant failed to prove any change in customary law. The trial court should have directed a jury verdict against the defendant on this point alone. Before leaving this issue we must observe there are 214 parcels of land on "Jebrik's side" of Majuro Atoll. Defendant was hard put to show a "change" in customary law by alleging seven transfers had been made without approval of those exercising the *iroij lablab* power on "Jebrik's side." No proof was introduced and, strangely, when a question relating to possible proof was asked by defense counsel, the trial judge ordered the question stricken because it was "improper" cross-examination.

Further recounting of trial error will provide small benefit. Needless to say, the record of this case should not serve as a guide for the future.

By reason of the foregoing, it is clear that the substantial rights of the appellant were gravely affected, and the judgment of the trial court must be, and is, reversed and remanded to the Trial Division for further proceedings and an appropriate judgment entered in accordance with this opinion.