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Pleading and Practice--Municipal Court--Jurisdiction Where Amount Exceeds One Thousand Dollars (Dilworth v. Yellow Taxi Corp., 220 A.D. 772 (2nd Dep't. 1927))

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however, that where a nuisance exists the owner of property must inform trespassers if he knows of their presence and of its existence.[7] And it is established that one who merely suffers or acquiesces in the use of his premises, or permits others to enter thereon for their own purposes, does not owe to such persons the duty to those who enter by invitation.[8] It appears, therefore, that the plaintiff had no cause of action against the defendant unless it could be shown that the latter acted wilfully and with intent to injure him.

PLEADING AND PRACTICE; MUNICIPAL COURT; JURISDICTION WHERE AMOUNT EXCEEDS ONE THOUSAND DOLLARS.—Five parties, named as plaintiffs in one summons, brought an action in the municipal court of the city of New York demanding separate and distinct judgments. The amount involved exceeded one thousand dollars and defendant denied the jurisdiction of the court over the subject matter of the action. *Held,* there was but one action and but one summons, and the amount demanded in that summons exceeded one thousand dollars. Hence the municipal court was without jurisdiction to entertain the action. Dilworth *v.* Yellow Taxi Corp., 220 App. Div. (N. Y.) 772 (2nd Dep't. 1927), reversing 127 Misc. 543.

The Civil Practice Act[1] provides than all persons may be joined in one action as plaintiffs where the right to relief arises out of the same transaction. A section of the Municipal Court Code incorporates this section into the code.[2] However the jurisdiction of the municipal court is limited to actions where the amount demanded in the summons does not exceed one thousand dollars.[3] So that, desirable as it may be that all actions arising out of one transaction be set out in one summons and complaint by the various plaintiffs this cannot be done in the municipal court where the amounts sued for by the respective plaintiffs total in the aggregate more than one thousand dollars. The Court of Appeals has stated that the purpose of the Civil Practice Act provision[4] is "to lessen the delay and expense of litigation by permitting the claims of different plaintiffs to be decided in one action instead of many when, although legally separate and distinct, they nevertheless so involve common questions and spring out of identical or related transactions that their common

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Pittsburgh Rwys. Co., 221 Pa. St. 463, 70 Atl. 826 (1908). But see Peuso *v.* McCormick, 125 Ind. 116, 25 N. E. 156 (1890).

[7] Peters *v.* Bowman, 115 Cal. 345, 47 Pac. 113 (1897); Hobbs *v.* George W. Blanchard &c. Co., 74 N. H. 116, 65 Atl. 382 (1906).

[8] Gibson *v.* Leonard, 143 Ill. 182, 32 N. E. 182 (1892); Redigan *v.* Boston &c. R. Co., 155 Mass. 44, 28 N. E. 1133 (1891); Cusick *v.* Adams, 115 N. Y. 55, 21 N. E. 673 (1889); Fox *v.* Warner-Quinlan Asphault Co., 204 N. Y. 240, 97 N. E. 497 (1912); Weaver *v.* Carnegie Steel Co., 223 Pa. St. 238, 72 Atl. 552 (1909).

[1] N. Y. Civ. Prac. Act § 209.
[2] N. Y. Mun. Ct. Code § 15.
[3] *Ibid.,* § 6.
[4] *Supra,* note 1.

trial may be had with fairness to the different parties."[5] The Appellate Division in its decision restricts the operation of this section so that it cannot apply to all cases in the municipal court. The question is now before the Court of Appeals for final determination[6] but it is doubtful whether a result different from that of the Appellate Division will be found. The practice frowned upon is barred upon sufficient though technical grounds and cannot be permitted under the present procedure. Remedial legislation giving the court jurisdiction in cases of this nature appears to be the only solution.

TAXATION—FRATERNAL EDUCATIONAL ASSOCIATION PROVIDING HOME FOR STUDENTS BELONGING TO FRATERNITY NOT ENTITLED TO TAX EXEMPTION AS A BENEFICENT AND CHARITABLE ORGANIZATION.—The plaintiff sought to tax the real property of the defendant, which claimed exemption under paragraph 7 of section 2 of the Revenue Act of Illinois (Cahill's Rev. Stat. 1925, p. 1998) providing that "all property of institutions of public charity, all property of beneficent and charitable organization, * * * when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit" shall be exempt from taxation. The defendant was a fraternal educational association conducted, not for pecuniary profit, but for the purpose, as stated in its charter, of providing a home for student members of the fraternity, at a moderate cost to those able to pay and gratuitously to those unable to pay. The highest rate charged was shown at the trial to be lower than the cost of similar accommodations elsewhere in the locality. Its officers served without compensation and no dividends or profit accrued to any member of the fraternity. The property consisted of a house in the city of Chicago occupied by members of the fraternity attending the University of Chicago, and was acquired by donations from alumni members and a mortgage on the premises. It was maintained partly by members attending school and partly by donations from alumni. The trial court rendered judgment for the plaintiff, holding that defendant was not an institution of public charity, nor a beneficent and charitable organization, so as to be exempt from taxation under the Revenue Act. This decision was affirmed on appeal. People *ex* rel. Carr, County Collector *v.* Alpha Pi of Phi Kappa Sigma Educational Ass'n. of University of Chicago, 158 N. E. 213 (Illinois, 1927).

The question at issue in this case was whether or not the defendant was an institution of public charity, or a beneficent and charitable organization, as contemplated by the Revenue Act. It is requisite to a public charity that it be for the benefit of the public or some portion thereof, but it is not necessary that a charity should be open to every one in the community.[1] Since it is the duty of the public to care for the indigent and the poor, any institution which

[5] Akely *v.* Kinnicutt, 238 N. Y. 466, 144 N. E. 682 (1924).

[6] Motion for leave to appeal to Court of Appeals granted, 221 App. Div. 761.

[1] 11 C. J. 338.