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CASE COMMENTS

Conflict of Laws—Full Faith and Credit versus Res Judicata

P brought this action under 28 U.S.C. § 2201 (1958) to have a Connecticut divorce decree declared invalid on the basis that Connecticut failed to give full faith and credit to a Nevada decree. *P* was awarded an absolute divorce in Nevada in 1956. In 1960, *D* commenced a suit for divorce in Connecticut. *P* appeared in the Connecticut action and pleaded the Nevada decree as a defense. The Connecticut court overruled *P's* defense and awarded *D* a divorce and alimony. *P* did not appeal the Connecticut decree. In 1961 *P* brought the present action in the federal district court in New York. The district court dismissed the action on the grounds that it lacked jurisdiction. *P* appealed. *Held,* affirmed. The district court did not lack jurisdiction. The complaint revealed facts, however, which showed that the action was barred by the principle of res judicata. The complaint showed that *P* appeared before the court in Connecticut and had been under its jurisdiction. Such being the case, *P* could not attack the judgment collaterally. *Southard v. Southard,* 305 F.2d 730 (2d Cir. 1962).

The present decision presents a conflict between two established legal principles. First, public policy demands that there be an end to litigation; that matters once tried shall be considered settled as between the parties. Second, every state possesses exclusive jurisdiction and sovereignty over persons and property within its territory. Any exertion of authority beyond these limits is a mere nullity and incapable of binding the parties. Another manner in which the conflict may be stated is: which legal principle rises higher, the full faith and credit clause or the principle of res judicata?

The United States Constitution, art. IV, § 1, provides, *inter alia,* that full faith and credit shall be given in each state to judicial proceedings in every other state. This provision compels controversies to be stilled, so that judgments rendered in one state are binding upon sister states. The effect of this provision was to make the local doctrine of res judicata a part of national jurisprudence. *Riley v. New York Trust Co.,* 315 U.S. 343 (1942). The full faith and credit clause was made binding upon the federal courts by an act of Congress. 28 U.S.C. § 1738 (1958).

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It has long been recognized, however, that a state cannot render a valid judgment over persons or property not within its jurisdiction. Any exertion of authority of this sort beyond the limit is a mere nullity and incapable of binding any other tribunal. *Duke v. Durfee,* 308 F.2d 209 (8th Cir. 1962). Thus, the full faith provision does not require recognition of a judgment of a sister state when it is determined such judgment was rendered without jurisdiction. *Treinies v. Sunshine Mining Co.,* 308 U.S. 66 (1939); *Adam v. Saenger,* 303 U.S. 59 (1936); *Bradley v. Canter,* 201 Va. 747, 113 S.E. 2d 878 (1960). The clause operates only when the jurisdiction of the court in another state is not impeached, either as to the subject matter or the person. *Thompson v. Whitman,* 18 Wall. 457, 463 (1873). Stated in other words, the full faith and credit clause does not preclude a second forum's inquiry into the question of the first court's jurisdiction. *Williams v. North Carolina,* 325 U.S. 226, 232 (1945).

In the principal case the full faith and credit clause would not preclude the Connecticut court from inquiring into the jurisdiction of the Nevada court. If the Connecticut court erroneously decided the issue, the right to review that error was by direct appeal. *Treinies v. Sunshine Mining Co., supra.* When the Connecticut court declined to recognize the effect of the Nevada decree, the basic question of jurisdiction as raised by *P* in the present declaratory judgment action was decided. As a result the federal court was bound by the legal principle of res judicata.

The conclusiveness of a jurisdictional determination by a court under the res judicata principle is more complex. The general rule is that where a jurisdictional fact has been litigated by a person in a foreign action and found against him, the question becomes res judicata and cannot be attacked collaterally by another court. *Shulman v. Miller,* 191 F. Supp. 418, 420 (E.D. Wis. 1961). Some distinction has been made, however, between cases dealing with personal jurisdiction and subject matter jurisdiction.

The RESTATEMENT, JUDGMENTS § 9 (1942), states that when a person appears in an action, even to object to the court's jurisdiction, and is overruled, the judgment of the court will be binding and he is precluded from attacking the judgment collaterally in another action. The fact that the person appears and has full opportunity to litigate the jurisdictional question, whether he does or not, appears to be controlling. *Sherrer v. Sherrer,* 334 U.S. 343 (1948); *Davis v. Davis,* 305 U.S. 32 (1938); *Baldwin v. Travelling Men's*

Ass'n, 283 U.S. 522 (1931); *Shulman v. Miller, supra.* In *Cook v. Cook,* 342 U.S. 126 (1951), the Court stated that jurisdiction over the parties is to be presumed unless disproved by the record itself or by extrinsic evidence, thereby rending the issue of personal jurisdiction res judicata in a collateral action in another state. In the principle case when *P* personally appeared before the Connecticut court, any question as to the jurisdiction, whether litigated or not, would be settled. Therefore, the federal district court was bound by the principle of res judicata to dismiss the action although the full faith and credit clause would not have precluded inquiry into the jurisdictional question.

A different result might be reached when the issue involved is subject matter jurisdiction. A 1962 decision held that a Nebraska judgment could be attacked collaterally in a district court of Missouri even though the Nebraska court had litigated the jurisdictional issue and found it had such. Here the subject matter was land. *Duke v. Durfee,* 308 F.2d 209 (8th Cir. 1962). This case basically followed the view of the RESTATEMENT, JUDGMENTS § 10 (1942), and a Supreme Court decision, *Grubb v. Public Util. Comm.,* 281 U.S. 470 (1930). A distinction between personal and subject matter jurisdiction may be basically sound since jurisdiction over the subject matter must arise by law and cannot arise by mere consent as in personal jurisdiction. *Grubb v. Public Util. Comm., supra.*

Other cases dealing with subject matter jurisdiction have reached opposite conclusions. The Court in *Treinies v. Sunshine Mining Co., supra,* held that an Idaho judgment in which the jurisdictional issue had been litigated was res judicata in a federal proceeding. The court has the authority to pass upon its own jurisdiction and its decree sustaining such, while open to direct attack, is res judicata in a collateral action. *Chicot County Drainage Dist. v. Baxter State Bank,* 308 U.S. 371, 377 (1940).

In summary, the circuit court in the principal case quite properly dismissed the action. Although the court was not bound by the full faith and credit clause to accept the Connecticut decree as final on the question of jurisdiction, it was bound by the legal doctrine of res judicata to treat it as such. Thus, the logical conclusion is that the legal doctrine of res judicata is on a higher legal plane than the full faith and credit clause of the Constitution.

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