Kentucky Law Journal

Volume 27 | Issue 2 Article 7

1939

The Doctrine of Blue Valley Creamery Co. v. Cronimus

Richard Bush Jr.
University of Kentucky

STUDENT NOTES

THE DOCTRINE OF BLUE VALLEY CREAMERY CO. v. CRONIMUS[1]

"Before entering into a discussion of the questions involved, we must say that the proceeding here is not only novel, but unprecedented." Thus wrote Judge Baird in his opinion in the recent Kentucky case of *Blue Valley Creamery Co.* v. *Cronimus*,[2] which laid down a new doctrine of *res judicata* for Kentucky.

The case involved the effect of a judgment in favor of an agent upon a subsequent action against his principal, the latter action arising out of the same accident and the principal's liability being entirely dependent upon the principle of *respondeat superior*.

The facts of the case were as follows: In March, 1935, trucks of the Blue Valley Creamery Co. and Cronimus collided at an intersection in Louisville, Kentucky. Both trucks were being operated by agents at the time. As a result of the collision both trucks were damaged, and Bohn, the driver of Cronimus' truck, and one Eastin, who was with him at the time, were injured.

Bohn and Eastin then filed separate suits against the Creamery Company for personal injuries, their actions being based upon the alleged negligence of the Creamery Company's driver, Jenkins, in operating its truck. The suits were tried together and judgments were rendered against the Creamery Company upon the ground that the negligence of its agent was the sole and proximate cause of the collision.

The Creamery Company then sued Cronimus, praying judgment for damages to its truck. This claim was founded upon alleged negligence of Bohn in operating Cronimus' truck. After the jury had been empaneled and sworn, the judge retired with counsel to his chambers and announced that in his opinion the question of responsibility for the accident had been adjudicated in the prior Bohn-Eastin actions, and that he had, on his own motion, made the record of those cases a part of the record in the present case. He further announced that he was dimissing the petition of the Creamery Company, and would allow evidence to be presented only as to the damage to Cronimus' truck, asserted by him in a counterclaim. The trial, completed under this ruling, resulted in a judgment for Cronimus for the damages to his truck. It was this proceeding to which Mr. Justice Baird referred as "not only novel, but unprecedented."

On appeal, the Court of Appeals upheld the ruling of the trial court, and laid down the following rule for Kentucky:

> "Where liability, if any, of a principal or master to a third person is purely derivative and dependent entirely on the prin-

[1] 270 Ky. 496, 110 S. W. (2d) 286 (1937).
[2] *Ibid.*

gence on the part of the servant or agent must necessarily relieve the master or principal, as there was then no medium through which negligence could be attributed to the master or principal. But it was not until the case of *Illinois Central R. R. Co.* v. *Applegate's Admx., et al.*,[6] that the court hesitated in applying this rule, although it did state in several previous opinions that there was much to be said for the argument advanced against it.

In the *Applegate* case the court said: "This rule was based on the theory that master and servant were joint tort-feasors. The theory, of course, was erroneous." It further critized the rule, but applied it in that case to prevent an injustice to the appellee who had practiced his case in conformity with the rule announced in the *Murphy* and subsequent cases.

It is to be noted in all of the cases cited and discussed so far, in which the rule of the *Murphy* case has been applied, that master and servant were sued in the same action.[7] In this respect they differ from the present case, and the exact question raised by it did not, therefore, arise. But in *Myers' Admx.* v. *Brown*,[8] a situation very similar to that of the present case was presented, and the rule of the *Murphy* case was applied. Thus, it is by comparison with this case that we find the exact differences in theory and application of the two rules.

The facts and holding of the *Myers'* case are briefly as follows: Clancy Brown, a minor, while driving his father's automobile, ran into and killed Myers. Myers' administratrix brought suit against the father under the family purpose doctrine—an agency theory. This action was defended by a traverse of the alleged negligence of the son and a plea of contributory negligence as to Myers. The jury found a verdict for the father. Thereafter suit was brought against the son to recover for his alleged negligent killing of Myers. The judgment in favor of the father was pleaded as a bar to any recovery against the son, but the court in its decision stated that the rule and theory of the *Murphy* case applied though the master and servant were sued separately. It thus held that a judgment in favor of a master or principal was not *res judicata* in a subsequent suit against the servant or agent, although the liability of the former was derived solely from and entirely dependent upon, the principle of *respondeat superior*.

Before a final consideration of the holdings of the two cases, a short discussion of *res judicata* as applied in this situation is necessary *Res judicata* is in reality a plea in estoppel, and as a general rule, for a judgment to be binding upon third persons, there must be privity and the estoppel[10] must be mutual. The case of master and servant relationship, when the servant is acting within the scope of his author

[6] 268 Ky. 458, 105 S. W. (2d) 153 (1936).

[7] See cases cited *supra* note 4.

[8] 250 Ky. 64, 61 S. W. (2d) 1052 (1933).

[9] 1 Freeman, Judgments (5th ed., 1925), Sec. 407.

[10] 1 Freeman, *op. cit. supra* note 9, Sec. 428.

ity, however, appears to be an exception[11] to these requirements, the courts either denying or overlooking them in their decisions.

The Kentucky courts have not followed the above mentioned exceptions in applying either of the two rules under discussion. In the *Myers'* case it was held that there was no privity between the master and servant as they were to be treated as joint tort-feasors. Some mention of mutuality also was made, the court stating that the principle of mutuality would be violated should the former judgment be admitted in bar, since the servant, the son, had no right of indemnity as against the master, the father. But the decision is based primarily upon the erroneous theory laid down in the *Murphy* case, that master and servant are joint tort-feasors.

The reasoning of the *Myers'* case is broken down in its entirety by the Court of Appeals in the present case. The fundamental step was taken when the erroneous theory of holding master and servant to be joint tort-feasors was discarded. After that advance, the rule of procedure as against joint tort-feasors having thus been dispensed with, it would have been possible for the court to have applied the exceptions set forth above and have reached their same decision. But it went further and held (1) the parties to be identical by "agency-privity"; and (2) that the estoppel worked by the prior judgment operated the same as to both parties, and thus was mutual. Hence, by this decision, master and servant are said to be in privity where the liability is predicated upon the doctrine of *respondeat superior*, and a judgment for one is *res judicata* in an action against the other, the estoppel being mutual.

Whereas, the rule of *res judicata* is the essence of this decision, it is to be noted that it is important in Kentucky not merely upon that one point, but also because (1) it places the relationship of master and servant for an act done by the agent within the scope of his authority upon a new basis, (2) it corrects a long line of erroneous rulings,[12] and (3) it establishes in Kentucky the rule which is followed generally[13] in the United States.

RICHARD BUSH, JR.

---

[11] Portland Gold Mining Co. v. Stratton's Independence, 158 Fed. 63 (1907); 1 Freeman, *op. cit. supra* note 9, Secs. 409, 429, 469, 470-79.

[12] See cases cited *supra* note 4.

[13] Bradley v. Rosenthal, et al., 154 Cal. 420, 97 Pac. 875 (1908); Williams v. Hines, et al., 80 Fla. 690, 86 S. W. 695 (1920); Southern Ry. Co. v. Harbin, et al., 135 Ga. 122, 68 S. E. 1103 (1910); Hayes v. Chicago Telephone Co., et al., 218 Ill. 414, 75 N. E. 1003 (1905); Childress v. Lake Erie & W. R. R. Co., et al., — Ind. App. —, 101 N. E. 332 (1913); Emery v. Fowler, 39 Me. 326, 63 Am. Dec. 627 (1855); McGinnis v. Chicago, R. I. & P. Ry. Co., et al., 200 Mo. 347, 98 S. W. 590 (1906); Pangburn v. Buick Motor Co., et al., 211 N. Y. 228, 105 N. E. 423 (1914); Cressler v. Brown, 79 Okla., 170, 192 Pac. 417 (1920); D. B. Loveman Co. v. Bayless, 128 Tenn. 307, 160 S. W. 841 (1913); Doremus v. Root, 23 Wash. 710, 63 Pac. 572 (1901).

"Where the right to recover is dependent solely upon the doctrine of *respondeat superior*, and there is a finding that the servant, through