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Res Judicata: Right of OPA to Enjoin Eviction Ordered by State Court

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application in this state,[16] and there is no reason for extending them to guard against fictitious evils. The result of this case, therefore, can be justified by applying the principle that when the reason for the rule ceases, the rule itself also ceases.[17]

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RES JUDICATA: RIGHT OF OPA TO ENJOIN EVICTION ORDERED BY STATE COURT

Fleming v. Simms, 164 F.2d 153 (C. C. A. 5th 1947)

Mrs. Susie Reinburg was in possession of certain premises in Dade County, Florida, holding a month-to-month tenancy under a life tenant, Mrs. Ella A. Olmstead. Upon Mrs. Olmstead's death, the remaindermen instituted an unlawful detainer action in the civil court of record of Dade County against Mrs. Reinburg, who had been advised by the OPA to remain in possession. The state court issued a writ of possession to the remaindermen. The Administrator for Office of Temporary Controls then instituted an action in the federal district court to enjoin the eviction. The remaindermen pleaded res judicata, and a temporary injunction was denied, whereupon the present appeal was instituted by the Administrator. HELD, suit in state court adjudicating rights of occupant was not res judicata against the Administrator suing in his own name to enjoin violations of the federal rent regulations for housing. Judgment reversed.

The principle upon which the doctrine of res judicata rests is that parties or their privies should not be permitted to litigate the same issue more than once.[1] The doctrine, however, does not operate to affect strangers to a judgment who are neither parties nor in privity with a party to the suit.[2] One is considered a stranger to the judgment where he

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[16]Farrington v. Greer, 94 Fla. 457, 113 So. 722 (1927); Cone v. Benjamin, 159 Fla. 800, 27 So.2d 90 (1946); FLA. STAT. 1941, §39.24.

[17]Layne v. Tribune Co., 108 Fla. 177, 146 So. 234 (1933); Waller v. First Savings & Trust Co., 103 Fla. 1025, 138 So. 780 (1931); Savannah, F. & W. Ry. v. Geiger, 21 Fla. 669 (1886); *see* McKissick v. Pickle, 16 Pa. 140 (1851); 2 Bl. Comm. 390, 391; Broom, Max. 159; Co. Litt. 70b.

[1]Hay v. Salisbury, 92 Fla. 446, 109 So. 617 (1926).

[2]Radio Corporation of America v. Radio Engineering Laboratories, Inc., 293 U. S. 1 (1934).

is not directly interested in the subject matter,[3] and does not actively and openly participate in the suit,[4] even though he might have availed himself of an opportunity to make himself a party but did not.[5] The Administrator clearly was not a party, nor was he in privity with a party, in the proceeding in the state court; and he, therefore, was not precluded on this ground from bringing an action in his own name.

Actually, however, Mrs. Reinburg (the occupant) was the beneficiary of the Administrator's prayer for injunctive relief against the eviction. Some cases, in applying the doctrine of res judicata, have extended its effect by considering the identity of parties not a mere matter of form but one of substance.[6] In such cases the courts look beyond the nominal party and treat as the real party the one whose interests are involved in the litigation.[7] It has been held repeatedly that where the Government lends its name as a plaintiff in a suit, not to enforce any public right or to protect any public interest, title or property, the nominal plaintiff, even though it is the United States, will be subject to the same defenses which would exist as against the real party in interest if he were suing in his own name.[8] This principle might be interpreted as barring the Administrator by res judicata unless it is found that he sues to protect a public right or interest. Under federal statutes the Administrator may in his own discretion make application to the appropriate court for an order enjoining violations of the federal rent regulations.[9] The courts have upheld these statutes, stating that the purpose of this emergency housing regulation is to provide the public with an instrument with which to erect emergency barriers against the inflationary forces set loose by the war,[10] and that the Price Administrator is entrusted with a share of

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[3]Litchfield v. Crane (Litchfield v. Goodnow), 123 U. S. 549 (1887).

[4]White v. Croker, 13 F.2d 321 (C. C. A. 5th 1926).

[5]Gratiot County State Bank v. Johnson, 249 U. S. 246 (1919); Brown v. Wright, 137 F.2d 484 (C. C. A. 4th 1943).

[6]Calhoun's Lessee v. Dunning, 4 Dall. 120 (U. S. 1792); *In re* Parks' Estate, 166 Iowa 403, 147 N. W. 850 (1914); Follansbee v. Waller, 74 Pa. 306 (1873).

[7]Gibson v. Solomon, 136 Ohio St. 101, 23 N. E.2d 996 (1939).

[8]Chicago, R. I. & P. Ry. v. Schendel, 270 U. S. 611 (1926); United States v. Beebe, 127 U. S. 338 (1888); United States v. Atlantic Coast Line R. R., 206 Fed. 190 (E. D. N. C. 1913); United States v. Des Moines Valley R. R., 84 Fed. 40 (C. C. A. 8th 1897).

[9]Title 50 U. S. C. Appendix §925 (a).

[10]Davies Warehouse Co. v. Bowles, 321 U. S. 144 (1944); Madison Park Corporation v. Bowles, 140 F.2d 316 (E. C. A. 1943).