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Civil Procedure - Judgments - Exceptions to the Rule of Res Judicata

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RECENT DECISIONS

CIVIL PROCEDURE — JUDGMENTS — EXCEPTIONS TO THE RULE OF RES JUDICATA—A land contract provided for a conveyance to Pearson from Adams and his wife. The wife was not a party to the contract and refused to execute the deed. Pearson sought specific performance requesting relief of a type not then available in Illinois[1] and when asked if he would accept a deed from Adams alone, he refused. The action was dismissed. Adams then brought this action in ejectment and Pearson counterclaimed requesting a deed executed by Adams alone. The trial court found that the judgment in the previous action was res judicata as to the counterclaim. On appeal, *held,* reversed. The equities in favor of Pearson so far outweighed the basic policies of res judicata that the counterclaim was not barred. *Adams v. Pearson,* 411 Ill. 431, 104 N.E. (2d) 267 (1952).

Res judicata is grounded in the dual policies of protecting the defendant from harassment and the public from multiplicity of litigation.[2] The effect of the doctrine is a conclusive determination of all matters in issue or which should have been in issue.[3] Theoretically this should be the result whenever a subsequent suit involves the same cause of action and the same parties, but such is not always the case. A finding that more than one cause of action arose from a particular set of facts is a simple but effective method of avoiding the bar.[4] This technique has been employed where separate rights were found to exist under different statutes,[5] or under a statute and the common law.[6] However, more recent authority would appear to cast some doubt on the validity of this approach at least insofar as separate statutory rights are concerned.[7] An equally simple method is a finding that the prior action involved the election of a nonexistent remedy.[8] The most widely employed method is based on the failure to

[1] Valuation of inchoate dower right and abatement of the purchase price; or payment of value of dower to the wife with a deed executed free from the interest; or indemnity against the contingency that the dower might vest. Pearson v. Adams, 394 Ill. 391, 68 N.E. (2d) 777 (1946). The remedies have been allowed in other jurisdictions. 46 A.L.R. 748 (1927); 148 A.L.R. 292 (1944).

[2] Wulfjen v. Dolton, 24 Cal. (2d) 891, 151 P. (2d) 846 (1944).

[3] Baltimore Trust Co. v. Norton Coal Mining Co., (D.C. Ky. 1939) 25 F. Supp. 968.

[4] Troxell v. Delaware, L. & W. R. Co., 227 U.S. 434, 33 S.Ct. 274 (1913).

[5] Ibid.

[6] Smith v. Lykes Brothers-Ripley S.S. Co., (5th Cir. 1939) 105 F. (2d) 604.

[7] The meaning of cause of action has expanded to include the theories of action. Williamson v. Columbia Gas and Electric Corp., (3d Cir. 1950) 186 F. (2d) 464. Also see Hurn v. Oursler, 289 U.S. 238, 53 S.Ct. 586 (1933). It appears that separate actions will be allowed in cases where they are for wrongful death and personal injuries due to the same accident. Chamberlain v. Mo.-Ark. Coach Lines, Inc., 354 Mo. 461, 189 S.W. (2d) 538 (1945). Annotation, 161 A.L.R. 208 (1946). Where it concerns separate actions for injury to person and to property, the majority rule is that there is one cause of action. 64 A.L.R. 663 (1929); 127 A.L.R. 1081 (1940).

[8] Norwood v. McDonald, 142 Ohio St. 299, 52 N.E. (2d) 67 (1943); Missildine v. Miller, 231 Iowa 371, 1 N.W. (2d) 110 (1941).

assert claims and defenses because of fraud, ignorance or mistake.[9] Fraud is usually the clear case;[10] ignorance and mistake may or may not result in a suspension of the rule depending on the particular facts. A distinction may be made as to errors of law and of fact, with the former not resulting in a suspension.[11] Negligence may also preclude a suspension.[12] In the principal case, the claim was one which would normally have been barred, but the court held that because of the equities involved, the principle of res judicata would not be applied. This is an extremely liberal approach but it is not without respectable authority.[13] Where a party has elected a non-existent remedy or where there is a failure to assert part of the cause of action because of fraud, ignorance or mistake, one cannot quarrel with a finding that res judicata will not apply since these cases involve elements of involuntariness and of lack of knowledge in good faith. But where a party has actual knowledge and fails to assert the claim, the same considerations are not involved and the claim should be barred except where it was specifically withdrawn or reserved for future litigation.[14] A wide application of the rule of the principal case would result in considerable relitigation to determine the equities of the previous case, thus tending to supersede the doctrine of res judicata, which serves a highly desirable function in the legal system. It would seem the better rule to require a showing of reasonable cause for the failure to assert the claim in the previous case.

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[9] In re 431 Oakdale Avenue Bldg. Corp., (D.C. Ill. 1939) 28 F. Supp. 63. For an extensive annotation see 142 A.L.R. 905 (1943).

[10] Hyyti v. Smith, 67 N.D. 425, 272 N.W. 747 (1937); Vineseck v. Great Northern Ry. Co., 136 Minn. 96, 161 N.W. 494 (1917). The theory in these cases would seem to be that the guilty party is estopped to raise the question of res judicata because of his fraud.

[11] International Curtis Marine Turbine Co. v. United States, (Ct. Cl. 1932) 56 F. (2d) 708. Guettel v. United States, (8th Cir. 1938) 95 F. (2d) 229, cert. den. 305 U.S. 603, 59 S.Ct. 64 (1938), concerned omission due to mistake of law but the language of the court at page 232 might be interpreted to bar claims whether the mistake was of fact or law. But see Hicks v. Stillwater County, 84 Mont. 38, 274 P. 296 (1929), where a mistake of law was involved.

[12] A party must acquaint himself with ascertainable facts. Badger v. Badger, 69 Utah 293, 254 P. 784 (1927). Also see Knabb v. Duner, 143 Fla. 92, 196 S. 456 (1940); Lightolier Co. v. Minter Homes Corp., 123 Misc. 420, 205 N.Y.S. 414 (1924).

[13] White v. Adler, 289 N.Y. 34, 43 N.E. (2d) 798 (1942) (inequitable that stockholders should escape liability); State ex rel. White Pine Sash Co. v. Superior Court for Ferry County, 145 Wash. 576, 261 P. 110 (1927) (no showing of damage to the property owner, with great loss certain for the applicant).

[14] McCaffrey v. Wiley, 103 Cal. App. (2d) 621, 230 P. (2d) 152 (1951).

[1] 17 Stat. L. 13 (1871), 8 U.S.C. (1946) §43.