Michigan Law Review

Volume 49 | Issue 3

1951

JUDGMENTS-RES JUDICATA BETWEEN ADVERSE CODEFENDANTS

Nolan W. Carson
University of Michigan Law School

JUDGMENTS—RES JUDICATA BETWEEN ADVERSE CODEFENDANTS—In an attempt to enforce a personal judgment, the judgment creditor brought a statutory equity suit[1] jointly against the judgment debtor (plaintiff in the present suit) and the defendant insurance company to reach and apply the proceeds of a motor vehicle liability policy. The bill was dismissed as to the insurance company. In

[1] 2 Mass. Gen. Laws (Ter. ed. 1932) c. 214, §3(10).

a subsequent action by plaintiff on the policy, the answer set up the equity decree as res judicata. Plaintiff demurred on the ground that the answer failed to allege that the parties were adversaries inter sese under the pleadings of the former suit. *Held,* order overruling the plaintiff's demurrer sustained. The answer alleged that the parties had been adversaries and had litigated the issues involved in the action on the policy. It cannot be said as a matter of law that an answer which sets up the defense of res judicata must allege that the parties were adversaries under the former *pleadings. Gleason v. Hardware Mutual Casualty Company,* 324 Mass. 695, 88 N.E. (2d) 632 (1949).

Res judicata is founded on the principle that the successful litigant and the courts should not be subjected to relitigation of matters once adjudicated. One text writer expresses the view that "the doctrine of res judicata does not rest upon the fact that a particular proposition has been affirmed and denied in the pleadings, but upon the fact that it has been fully and fairly investigated and tried—that the parties have had an adequate opportunity to say and prove all that they can in relation to it, that the minds of the court and jury have been brought to bear upon it, and so it has been solemnly and finally adjudicated."[2] A logical application of the principle with emphasis on its policy foundation dictates that when hostile coparties have in fact litigated an issue upon which they are directly opposed in interest, a final adjudication of the matter involved should be conclusive between them although they were not formally arrayed as adversaries. Of course the application of res judicata between coparties must remain fraught with difficulties since in each case the proceedings must be examined to discover whether there was actual hostile litigation between parties on the same side. When a plaintiff sues joint tortfeasors to recover for injuries received as a result of their negligent conduct, the courts generally hold that the defendants are not adversaries inter sese unless there were cross-pleadings.[3] This result is predicated on the theory that separate answers raise no issues between the defendants since each defendant is solely concerned with refuting plaintiff's claim against him rather than affirmatively litigating an issue with his codefendant.[4] The principal case presents a different situation. In the equity suit to reach the proceeds of the policy, the judgment creditor and judgment debtor were aligned in interest—both were interested in proving that the insurance company was liable upon the policy. The defendants were directly opposed upon the vital issue of policy coverage and were actually adverse even though there were no cross-pleadings. The *Restatement of Judgments* has constructed a hypothetical situation almost identical to the facts of the present case and takes the view that cross-pleadings are not required under these facts to raise issues between the co-

[2] 2 BLACK, JUDGMENTS §614 (1902).
[3] 152 A.L.R. 1066 (1944).
[4] Trotter v. Klein, 140 Misc. 78, 249 N.Y.S 20 (1930); Snyder v. Marken, 116 Wash. 270, 199 P. 302 (1921); Glaser v. Huette, 232 App. Div. 119, 249 N.Y.S. 374, affd. 256 N.Y. 686, 177 N.E. 193 (1931).

defendants.[5] Although the instant case arose on a technical question of pleading which did not require the Massachusetts court to decide if estoppel by judgment should apply between the parties, the opinion agrees with the preponderance of authority that codefendants may, in a proper case, be adversaries inter sese without cross-pleadings.[6]

Nolan W. Carson

[5] JUDGMENTS RESTATEMENT §82, comment *b* (1942).

[6] 30 AM. JUR. §234; 1 FREEMAN, JUDGMENTS §§423, 425 (1925); A.B.C. Fireproof Warehouse Co. v. Atchison, T. & S.F. Ry. Co., (8th Cir. 1941) 122 F. (2d) 657; Fidelity & Casualty Co. of New York v. Federal Express, (6th Cir. 1943) 136 F. (2d) 35; Wright v. Schick, 134 Ohio St. 193, 16 N.E. (2d) 321 (1938); Ohio Casualty Insurance Co. v. Gordon, (10th Cir. 1938) 95 F. (2d) 605.