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The Doctrine of Res Adjudicata - Horowitz v. Horowitz

THE DOCTRINE OF RES ADJUDICATA

Horowitz v. Horowitz[1]

This case involved a question as to the application of the doctrine of res adjudicata under the following circumstances.

The widow and infant children of a decedent filed a bill in which they asserted that an assignment of certain corporate stock, made by the decedent to his father, defendant to the bill, was made in trust for plaintiffs. They asked to have a trust impressed on the stock, and the defendant's answer asserted in defense that the assignment effected a free and voluntary gift of the stock to him, free of any trust. The court thereafter passed a decree dismissing the

[1] 175 Md. 16, 199 A. 816 (1938).

bill, with a qualification to the effect that nothing in the decree should "prejudice or affect the right of the estate of the said deceased, or the administratrix and distributees of the said estate, to proceed as they may be advised is proper to enforce any rights of said estate and the distributees thereof in, to and respecting said stock." Subsequently the widow as administratrix filed a bill against the same defendant, asking that she, as administratrix, be declared the true owner of the stock, and the Chancellor so decided, holding that the title to the stock was vested in the estate of the deceased, for the reason that the defendant had, in the previous case, "affirmatively asserted in his answer title in himself" to said stock, "by virtue of an alleged gift" to him by deceased, "thus making said gift and title in the defendant an issue in said cause", which issue "was adjudicated by the court adversely to him". On the defendant's appeal from this latter decree, the Court of Appeals reversed it, giving as the reason, and the sole reason, for such reversal, the presence of the words of qualification in the decree dismissing the bill in the previous suit, the opinion stating that, had it not been for these words of qualification, the decree of dismissal would have been an adjudication of the merits of the controversy, constituting "a bar to any further litigation of the same subject between the same parties". The opinion thus said, in effect, that were it not for the words of qualification in the decree dismissing the bill in the first suit, defendant would have been precluded by such decree from asserting in the second suit the defense which it did assert therein, that deceased had made a valid transfer to him of the stock, vesting in him the title thereto. The implication of the opinion is almost unavoidable that such preclusion would have existed, as the Chancellor stated that it did, by reason of the fact that the defendant had asserted such defense in the previous suit, which had been adjudicated.

As regards the effect of the words of qualification in the decree dismissing the earlier bill, it may be questioned whether these words, obviously intended for the benefit of decedent's estate and the distributees thereof, as enabling them to bring a subsequent suit to assert their rights, should, as was done by the Court of Appeals, be given an effect favorable to the defendant, for whose benefit the words were apparently not intended, as enabling him to make a defense which otherwise he could not have made.

But conceding the correctness of the opinion in giving such effect to the qualifying words, for the purpose of the actual decision, there seems room for question as to the view, apparently asserted in the opinion, that the dismissal of the bill in the earlier case, without words of qualification, would have involved an adjudication adverse to the defendant's title to the stock, precluding him from asserting such title in the subsequent suit by the administratrix. Any discussion of this question involves a consideration of the nature of the issue or issues adjudicated in the prior suit, since an adjudication can be regarded as res adjudicata, for the purpose of an issue in a subsequent suit on a different claim or demand, only in so far as that issue was involved in the prior suit.[2]

The issue raised by the bill in the first suit was as to the existence of a trust, and it is difficult to concede that a different issue was introduced because defendant's answer denied "that said stock was delivered to him in trust as alleged", and asserted that, "on the contrary", it "was given to him as his absolute property". This language of the answer seems to amount merely to a denial that the gift to defendant was in trust, as asserted in the bill. As said in the appellant's brief, "wherein does a mere admission of plaintiffs' allegation that the stock was given him, with a denial that it was given in trust for plaintiffs, differ from an assertion that it was not given in trust for them?" But even conceding that defendant's answer in the first suit did, as asserted by the Chancellor in the second suit, make the gift to and title in defendant an issue in the first suit, it is difficult to see how the decree, which merely dismissed the bill asserting a trust, could be regarded as an adjudication adverse to defendant as regards the gift to him and his title to the stock. The decree contained no reference to the question of title to the stock. The Chancellor did, it is true, in passing the decree of dismissal, state that, in his opinion, decedent made no valid gift of the stock to defendant, and that the title to and ownership of the stock remained in decedent's estate, but this expression of opinion was not part of the decree, and could not limit or extend its effect. As explicitly stated in the opinion of the Court of Appeals, in accordance with the Maryland cases, the reasons given for a decree are not a part thereof, and this

[2] Bldg. & Loan Assn. v. Gimbel, 171 Md. 1, 187 A. 856 (1936); Kiser v. Lucas, 170 Md. 486, 185 A. 441 (1936); FREEMAN, JUDGMENTS (5th Ed.) Secs. 272, 277; 34 C. J. 915, 937, Judgments, Secs. 1325, 1340.

is certainly true of expressions of opinion which cannot even be regarded as reasons for the decree.[3] It would seem to have been owing to a misapprehension by the Chancellor in the second case as to the effect of the expression of opinion in the earlier case, that the decision in the earlier case was regarded by him as conclusive of the later case. Ignoring this expression of opinion as, it seems, it should be ignored, it appears that the decree of dismissal, even if it could be regarded as an adjudication as to defendant's title to the stock, might as well be construed as adjudging the title to be in the defendant as to be in decedent's estate.

Another consideration adverse to the view that the decree dismissing the bill, if without qualification, would have been available to the administratrix in the second suit, as establishing her title to the stock, is the fact that the administratrix was not, as such, a party to the first suit. An adjudication in favor of one who is not a party to the suit in which the adjudication occurs, is a somewhat difficult conception. Ordinarily a judgment or decree is available in a second suit only to one who was a party to the first suit, or to one in privity with a party,[4] this being merely an application of the general rule that a judgment is conclusive only as between the parties to the suit and their privies.[5] While exceptions exist to the rule restricting the benefit of a previous judgment or decree to a party, or the privy of a party, to the previous suit,[6] these exceptions appear to be based upon the theory, in the particular case, of an identity of interest or liability between parties to the two suits. And it can hardly be said that, in the *Horowitz* case, there was identity of liability or interest between the administratrix, plaintiff in the second suit, seeking to recover the stock as belonging to decedent's estate, and plaintiffs in the first suit, asserting a trust as created by decedent in his lifetime. Nor was there any privity between them, privity existing, in this connection,

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[3] That an opinion is not part of the decree, see Martin v. Evans, 85 Md. 8, 36 A. 258 (1897); Alleghany Corp. v. Aldebaran Corp., 173 Md. 472, 196 A. 418 (1938).

[4] 34 C. J. 973, Judgments, Sec. 13g(1); Towing Co. v. Assurance Co., 99 Md. 433, 58 A. 16 (1904); Groshon v. Thomas, 20 Md. 234 (1863); Moschzisker, *Res Judicata* (1929) 38 Yale L. J. 299, 303.

[5] Feldmeyer v. Werntz, 119 Md. 285, 86 A. 986 (1913); Wiley v. McComas, 137 Md. 637, 113 A. 98 (1921); 2 BLACK, JUDGMENTS (2nd Ed.) Sec. 534.

[6] 34 C. J. 975-84, Judgments, Secs. 1392-1404. See Myers v. Gordon, 165 Md. 534, 170 A. 186 (1934).

only by reason of mutual or successive relation to the same right of property.[7]

The doctrine of res adjudicata (or res judicata) embraces two main rules, the distinction between which is frequently ignored by the courts.[8] One rule is that a former adjudication, rendered on the merits, is an absolute bar to a subsequent suit between the same parties or their privies upon the same claim or demand,[9] and the other rule is that an adjudication of any issue, fact, or matter is conclusive as between the parties and their privies for the purpose of a subsequent action or suit, although this be upon a different claim or demand.[10] The language of the opinion in *Horowitz v. Horowitz* seems to suggest an anomalous extension of the latter rule, to the effect that the defendant to a bill in equity, though securing an unqualified decree dismissing the bill, is precluded from asserting, in a subsequent suit by the same plaintiff, any defense which he may have asserted in the first suit.

[7] 15 R. C. L., Judgments, Sec. 488; 1 FREEMAN, *op. cit. supra* n. 2, Sec. 438.

[8] As to the distinction between the two rules, see 2 BLACK, *op. cit. supra* n. 5, Secs. 506, 673; 2 FREEMAN, *op. cit. supra* n. 2, Secs. 676, 677; 34 C. J. 743, 874, Judgments, Secs. 1154, 1283; Cromwell v. County of Sac, 94 U. S. 351, 24 L. Ed. 195 (1877).

[9] As in State v. Brown, 64 Md. 199, 1 A. 54 (1885); Impervious Products Co. v. Gray, 127 Md. 64, 96 A. 1 (1915); Moodhe v. Schenker, 176 Md. 259, 4 A. (2d) 453 (1939).

[10] As in Trayhern v. Colburn, 66 Md. 277, 7 A. 459 (1886); Barrick v. Horner, 78 Md. 243, 27 A. 1111 (1893); Miller v. Miller, 159 Md. 204, 150 A. 451 (1930).