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Conflict of Laws -- Full Faith and Credit -- Res Judicata or Estoppel by Judgment

CASES NOTED

CONFLICT OF LAWS — FULL FAITH AND CREDIT — RES JUDICATA OR ESTOPPEL BY JUDGMENT

Plaintiff, after having his suit for divorce in Ohio on the grounds of extreme cruelty and gross neglect of duty denied,[1] brought suit in Florida on the grounds of extreme cruelty.[2] *Held*, where witnesses and testimony are the same in both actions, the causes of action are the same, and the test used in determining whether or not the decree of a sister state shall be given full faith and credit is res judicata, rather than estoppel by judgment. *Riehl v. Riehl*, 60 So.2d 35 (Fla. 1952).

The doctrine of res judicata prevents a cause of action which has once been fairly litigated from ever being relitigated by the same parties or their privies.[3] The judgment is a bar forever *to that cause of action*, not only as to the issues actually presented, but also to every justiciable issue which *might* have been presented.[4] However, res judicata does not preclude the parties from litigating a *different* cause of action. The rule seems clear that where a final judgment has been rendered, and a suit is later brought by the same parties, but based upon a different cause of action, estoppel by judgment rather than res judicata, is the proper doctrine applicable[5] in distinguishing whether the former suit is a bar to the second action. This is a distinction of considerable importance, since estoppel by judgment only operates to preclude the parties from relitigating matters which were *actually* raised and determined in the former adjudication.[6]

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1. OHIO CODE ANN. § 11979 (Cum. Supp. 1952).
2. FLA. STAT. § 65.04 (1951).
3. Cromwell v. County of Sac, 94 U.S. 351 (1876); Williamson v. Columbia Gas and Electric Corp., 186 F.2d 464 (3d Cir. 1950); Lake Region Hotel Co. v. Gallick, 111 Fla. 64, 149 So. 205 (1933); Hollywood Cartage Co. v. Wheeling & L. E. Ry., 85 Ohio App. 182, 88 N.E.2d 278 (1950); Dierks v. Walsh, 203 Okla. 113, 218 P.2d 920 (1950); RESTATEMENT, JUDGMENTS § 48 (1942).
4. La Fontaine v. The G. M. McAllister, 101 F. Supp. 826 (S.D. N.Y. 1951); Bosare v. Metropolitan Trust Co., 105 Cal. App.2d 834, 234 P.2d 296 (1951); Wolfson v. Rubin, 52 So.2d 344 (Fla. 1951); Adams v. Pearson, 411 Ill. 431, 104 N.E.2d 267 (1952); Noel v. Noel, 307 Ky. 132, 210 S.W.2d 142 (1947); Sedam v. Sedam, 83 Ohio App. 138, 78 N.E.2d 914 (1948).
5. Birnbaum v. Hall, 101 F. Supp. 605 (E.D. S.C. 1951); Gordon v. Gordon, 59 So.2d 40 (Fla. 1952); Bagwell v. Bagwell, 153 Fla. 471, 14 So.2d 841 (1943); Prall v. Prall, 58 Fla. 496, 50 So. 867 (1909); Charles E. Harding Co. v. Harding, 352 Ill. 417, 186 N.E. 152 (1933); Lebrun v. Marcey, 86 A.2d 512 (Md. 1952); RESTATEMENT, JUDGMENTS § 68 (1942).
6. Davis v. Brown, 94 U.S. 423 (1877); Cromwell v. County of Sac, 94 U.S. 351 (1876); Birnbaum v. Hall, 101 F. Supp. 605 (E.D. S.C. 1951); Sanders v. Nieman, 17 Cal.2d 563, 110 P.2d 1025 (1941); Gray v. Gray, 91 Fla. 103, 107 So. 261 (1926); Hewett Grocery Co. v. Biddle Purchasing Co., 289 Mich. 225, 286 N.W. 221 (1939); Fox v. Employer's Liability Corp., 239 App. Div. 271, 268 N.Y. Supp. 536 (4th Dept. 1934).

The test used in determining whether or not the causes of action are the *same* for the purpose of ascertaining whether res judicata is applicable, is the identity of facts essential to the maintenance of the action,[7] or whether the same evidence would sustain both.[8] If there is any uncertainty as to the matter formerly adjudicated, the party claiming the benfit of the former judgment has the burden of showing it with sufficient certainty.[9] This may be done by introducing the record of the previous proceedings or by extrinsic evidence.[10] These principles are applicable in cases where a party sues for divorce in one state subsequent to his having been denied a divorce in a sister state. Since the statutes of the various states are vastly different, the second suit is rarely based on a statute identical in terms with that involved in the former action, and the test used in determining whether the causes of action are the same is the identity of facts necessary for the granting of a divorce under the pertinent statute.[11]

The recent Florida case of *Gordon v. Gordon*[12] held that in determining whether or not full faith and credit will be given the decree of a sister state denying a divorce, res judicata will not apply unless the issues in both actions are *essentially* the same,[13] nor will it apply if a greater degree of proof is required in the second action.[14] The *Gordon* case further held that estoppel by judgment will apply only if it be shown that the *precise* facts have been determined in the prior action,[15] the term "precise facts" being construed by the court to mean that "every point and question" must be shown to have been litigated in the first action.[16]

The instant case recognizes the proper test to be applied, and it also is in accord with the weight of authority on the problem of whether an action under a state statute should bar an action in another state under a similar statute. Using an analytical approach, it is difficult to say that

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7. Pierce v. National Bank of Commerce, 268 F. 487 (8th Cir. 1920); Jackson v. Bullock, 62 Fla. 507, 57 So. 617 (1926); Templeton v. Scudder, 19 N.J. Super. 576, 85 A.2d 292 (1951); Canin v. Kesse, 20 N.J. Misc. 371, 28 A.2d 68 (Dist. Ct. 1942).

8. Hoofnagle v. Alden, 172 Minn. 290, 215 N.W. 211 (1927); Lipkind v. Ward, 256 App. Div. 74, 8 N.Y.S.2d 832 (3d Dept. 1939); Weinstein v. Blanchard, 9 N.J. Misc. 361, 152 Atl. 787 (Sup. Ct. 1930); Lyons v. Garnette, 88 Ohio App. 543, 98 N.E.2d 346 (1950); Cutler v. Jennings, 99 Vt. 85, 130 Atl. 583 (1925).

9. American Trust Co. v. Butler, 47 F.2d 482 (5th Cir. 1931); Coleman v. Coleman, 157 Fla. 515, 26 So.2d 445 (1946); Rosenbury v. Peter, 269 Mass. 32, 168 N.E. 166 (1929); West v. Imbrie, 127 Misc. 624, 216 N.Y.Supp. 337 (Sup. Ct. 1926); Howe v. Farmer's and Merchant's Bank, 129 Okla. 232, 264 Pac. 210 (1928).

10. Syms v. McRitchie, 187 F.2d 915 (5th Cir. 1951); Fryberger v. Consolidated Electric and Gas Co., 22 Del. Ch. 357, 7 A.2d 211 (1939); Coleman v. Coleman, 157 Fla. 515, 26 So.2d 445 (1946); Sullivan v. Aetna Casualty and Surety Co., 14 N.J. Misc. 890, 190 Atl. 72 (Sup. Ct. 1937).

11. Gordon v. Gordon, 59 So.2d 40 (Fla. 1952); Bagwell v. Bagwell, 153 Fla. 471, 14 So.2d 841 (1943); Pearson v. Pearson, 230 N.Y. 141, 129 N.E. 349 (1920).

12. 59 So.2d 40 (Fla. 1952).

13. *Id.* at 44 (Fla. 1952).

14. *Ibid.*

15. Id. at 45.

16. *Ibid.*

two distinct state statutes, differently worded and construed, can be thought of as the same cause of action.

It is submitted that although the instant case reaches the proper result, it is but the product of a group of cases which have drawn many fine and sometimes inaccurate distinctions between res judicata and estoppel by judgment. The confusion resulting might be avoided by emphasis in court decisions on the basic premise that res judicata bars another *action* while estoppel by judgment precludes relitigation of *facts*.

CONSTITUTIONAL LAW — USE OF TAXING POWER BY THE FEDERAL GOVERNMENT IN CONFLICT WITH STATES' POLICE POWERS

Plaintiff filed an information against the defendant for failing to register and pay the "gamblers occupational tax".[1] *Held*, the act is unconstitutional because the requirements of registration usurped the police powers of the states. *United States v. Kahriger*, 105 F. Supp. 322 (E.D. Pa. 1952).

There can be no doubt about the federal government's extensive power to tax. Equally certain is it that the police powers are exclusive with the states. Doubts, if any, exist only where Congress, through taxation legislation, intentionally or unintentionally infringes upon the police powers reserved to the states.

Several times, from the early 19th century to date, the Supreme Court of the United States has reiterated the principle that the federal government cannot accomplish by means of the taxing power that which it otherwise cannot do.[2] More often, however, it has chosen to rely on the principle that if Congress has passed a revenue measure, the Court will not look to the motives behind the passing of the tax legislation.[3] In a fairly recent case involving the "Marijuana Tax" the following language appears: "It is beyond serious question that a tax does not cease to be valid merely because it regulates, discourages, or even definitely deters the activities taxed. Nor does a tax statute necessarily fall because it touches on activities which Congress might not otherwise regulate."[4]

To support its view, the court in the instant case relied on *United States v. Constantine*.[5] Quoting at length from the opinion of Mr. Justice Roberts, the court concludes that it is immaterial that the tax, by itself, could be a valid one. With apparent misgivings and with consideration given to present

1. 65 STAT. 529, 26 U.S.C. §§ 3290, 3291 (1951).
2. United States v. Constantine, 296 U.S. 287 (1935); Bailey v. Drexel Furniture Co., 259 U.S. 20 (1922); Gibbons v. Ogden, 9 Wheat. 1 (1824).
3. United States v. Sanchez, 340 U.S. 42 (1950); United States v. Darby, 312 U.S. 100 (1941); Sonzinsky v. United States, 300 U.S. 506 (1937); Nigro v. United States, 276 U.S. 332 (1928); United States v. Doremus, 249 U.S. 86 (1919); McCray v. United States, 195 U.S. 27 (1904).
4. United States v. Sanchez, 340 U.S. 42, 44 (1950).
5. 296 U.S. 287 (1935).