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Res Judicata -Privies-What Might have been Adjudicated was Adjudicated

RES JUDICATA—PRIVIES—WHAT MIGHT HAVE BEEN ADJUDICATED WAS ADJUDICATED—After the death of a testator in 1905, the trustees under his will brought an action in 1906 for the construction thereof, making the widow, daughter and the daughter's two children parties defendant. The court construed the will to provide a life estate in the income from the land to the widow, a certain sum for life to the daughter if she should survive, and the trustees to retain title to the land until the two grandchildren, who were specifically named in the will, reached twenty-one, paying them support, etc., and the fee to go to them on attaining that age. The widow survived the daughter, dying in 1929. Shortly thereafter, appellants, sons of the daughter by a later marriage and not in being at the time of testator's death, filed a partition suit alleging that they were each owners of an undivided one-fourth of the real estate. The lower court held they were bound by the prior judgment. On appeal, they contend that the court did not actually determine whether the provisions as to the trustee's holding title until the appellees, the two named grandchildren, were twenty-one was a restraint on alienation, and hence, the decree was not res judicata. Held, bound by the prior decree.[1]

This holding is entirely in accord with a long line of Indiana authorities, and is a recognition of the rule that "what might have been adjudicated

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[13] Green v. Coast Line R. Co. (1895), 97 Ga. 15, 24 S. E. 814.
[14] Ibid.
[15] Ibid.
[16] Ibid.
[17] Fosdick v. Schall (1878), 9 Otto (99 U. S.) 235.
[18] Ex parte Brown (1880), 15 S. C. 518.
[19] Ibid.
[20] Ibid.
[1] Reynolds v. Lee Appellate Court of Indiana, June 28, 1933, 186 N. E. 337.

was adjudicated."[2] The rule is a wise and necessary one, discouraging contentious litigation as to matters that might previously have been raised in a law suit but were not, due to carelessness of attorneys or litigants, spite, negelect or some other reason. It is not necessary, as between the parties and their privies, that the record should show the question upon which the right of the plaintiff to recover or the validity of the defense depended; but only that the same matter in controversy might have been litigated.[3] So long as the court had jurisdiction of the parties and the subject-matter, and the question now sought to be raised was within the issues and thus might have been raised on the issues, then it is forever barred as a subject of collateral attack on the prior judgment. The question frequently arises in connection with the splitting of causes of action where the plaintiff sues for only a part of the sum due and is later barred from suing for the balance since he might have recovered the entire amount in the first action. However, it applies with equal force in actions involving the title to land, for the necessity for security of title is very strong in such cases.

Thus, where a defendant in a partition suit, files a cross-complaint setting up equitable liens on the land, an answer showing that the matters alleged in such cross-complaint were or might have been litigated in a former suit for partition of the same land between substantially the same parties claiming respectively the same shares by the same title, is a bar to the action.[4] Where an administrator filed a petition for sale of decedent's realty and present plaintiff was made a party defendant thereto and failed to set up or assert his lien for taxes, he can not thereafter bring an action to foreclose such lien as he is bound by the prior adjudication since he might have set up such lien therein.[5] In a suit to quiet title based on the terms of a will, where it appeared that the will had been construed by consent of the parties in a previous suit, a decree therein was held binding in the suit to quiet title notwithstanding the pleadings in the former suit did not put in issue the present plaintiff's right to the real estate under the will.[6] Once a will has been construed and no appeal taken from the decree entered in such proceedings, the construction thereof can not be later raised in any other type of proceeding as to any matter that was or could have been presented in the former action.[7]

The rule must be limited, however, to fully protect the rights of the parties. Thus, res judicata applies only to such matters as were within the issues of the former action.[8] Even where a finding was made in a

[2] Fischli v. Fischli (1825), 1 Blackf. 360, 12 Am. Dec. 251; Elwood v. Beymer (1884), 100 Ind. 504; Vail v. Rinehart (1885), 105 Ind. 6, 4 N. E. 218; Kurtz v. Carr (1885), 105 Ind. 574, 5 N. E. 692; Maynard v. Wairdlich (1900), 156 Ind. 562, 60 N. E. 348; Cannon v. Castleman (1903), 162 Ind. 7, 69 N. E. 455; Comparet v. Hanna (1870), 34 Ind. 74; Isbell v. Stewart (1890), 125 Ind. 112, 25 N. E. 160; Hedges v. Hehring (1917), 65 Ind. App. 586, 115 N. E. 433; Largura v. Deutsch (1931 Ind. App.), 176 N. E. 39.

[3] Washington A & G Steam Packet Co. v. Sickles (1860), 65 U. S. 333.

[4] Elwood v. Beymer (1884), 100 Ind. 504.

[5] Vail v. Rinehart (1885), 105 Ind. 6, 4 N. E. 218.

[6] Burrill v. Jean (1921 Ind. App.), 132 N. E. 704.

[7] Nelmo v. Turner (1923), 309 Ill. 613, 139 N. E. 900.

[8] Moore v. State ex rel. Miller (1827), 114 Ind. 414, 16 N. E. 836. It must be noted that the issues are not necessarily determined by the record, but by the evidence as well.

former action, if it was not within the issues and no attempt was made to carry it into the judgment rendered, it is not res judicata.[9] So, too, the judgment in the former action must be on the merits.[10]

If the decree in the former action stipulates that it should not be conclusive, then it is no bar to further proceedings. Hence, in a construction of a will, where the decree so stipulated, a party to such decree was later allowed to bring a suit to quiet title to land involved in the former decree and raise matters which might have been adjudicated therein.[11] Where two or more defendants make issues with a plaintiff, a judgment determining those issues in favor of the defendants does not settle between the defendants any fact that might have been, but was not put in issue by a proper pleading.[12]

Applying these principles to the instant case, it is clear that the decision is sound. In finding that the named grandchildren took a fee on attaining the age of twenty-one, the court must necessarily have found that such interest was valid, and the postponement of the vesting thereof not a violation of the rule against restraints on alienation, even though the question was not actually passed upon. It could have been, and should have been raised therein and to allow it now would be to allow collateral attack on a judgment from which no appeal had been taken.

The only other question presented is one of representation, i. e., whether these plaintiffs, after-born children of the daughter, were sufficiently represented to be bound by the former decree. The only way in which they can and do claim any interest in the realty is as heirs of the daughter. The daughter was a party to the former decree, had the opportunity to raise the question and had she brought this suit, she would have been bound. One claiming in privity with another, whether by blood, estate or law, occupies the same situation with such other as to any judgment for or against him and the record of the judgment is equally admissible as evidence against either. Privies, within the meaning of the rule of res judicata, are persons who have mutual or successive relationship to the same right or thing, who claim through or under the parties to the former action and whose interests were acquired subsequent to the commencement of such an action.[13] There is a long line of authorities holding that an heir is bound by a decree against an ancestor, so that question is no longer open.[14] Children, however, are bound by judgments for or against their parents only where they claim from, through or under their parents.[15] Here, it is clear that appellants were claiming under their mother, a party to the former action, and the court was clearly correct in holding they were bound by such decree entered therein. P. C. R.

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[9] Trook v. Crouch (1924), 82 Ind. App. 309, 137 N. E. 773.

[10] Keokuk Ry. Co. v. Donnell (1889), 77 Iowa 221.

[11] Busick v. Busick (1917), 65 Ind. App. 655, 115 N. E. 1025, 116 N. E. 861.

[12] Whitesell v. Strickler (1916), 167 Ind. 602, 78 N. E. 845. Quere: Whether now even a counterclaim which might have been filed by one defendant against another is barred on the principles of res judicata by some of the later decisions.

[13] 34 C. J. 973 and cases cited.

[14] State v. St. Louis (1898), 145 Mo. 551, 46 S. W. 981, 42 L. R. A. 113; Henderson County v. Henderson Bridge Co. (1903), 116 Ky. 164, 75 S. W. 239, 105 Am. St. Rep. 197; Tadlock v. Eccles (1858), 20 Tex. 782, 73 Am. Dec. 213; Otherwein v. Thomas (1889), 127 Ill. 554, 21 N. E. 430; Genz v. Genz (1912), 254 Ill. 161, 98 N. E. 272.

[15] 34 C. J. 1022 and cases cited.