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Civil Procedure And Evidence—Res Judicata—Closed Corporations

Richard G. Birmingham

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a fit subject for a declaratory judgment. Such actions are not the place for gratuitous legal advice as to moot questions. The Rules of Civil Practice²⁸ require that the prayer in such an action, "specify the *precise* rights and other legal relations of which a declaration is requested." Third, the striking out of the finding that there was a term of the agreement relating to a limitation on the power to increase the number of directors would have no effect at all on the rights created by the prior action. The elimination here is not the striking out as invalid one term of an entire contract thereby invalidating the whole. It is merely a finding that the agreement made contained a provision concerning the voting of stock but did not contain a provision concerning a limitation on the number of directors. It is evident, however, that the equities in Storer's favor weighed heavily with the court to prevent Ripley from doing indirectly what he had agreed not to do directly.

Privity and Res Judicata—Closed Corporations

*In re Shea's Will*²⁹ involved an extended controversy which arose when the plaintiff general manager of the Shea theatre corporation requested an arbitration of a dispute over bonus computation. The original employment, negotiated by plaintiff and the decedent Shea provided for such arbitration,³⁰ and the terms were substantially the same in renewals of the contract, made in 1942 and 1946. The heirs of Shea who were the sole stockholders of the theatre corporation immediately discharged the plaintiff and commenced an action to declare fraudulent, and void the extensions of plaintiff's contract. The Surrogate upheld the contract renewals and dismissed.³¹ The plaintiff then proceeded with his action to compel arbitration and was met by the corporation's attempt to re-litigate the validity of the contracts.

The Court held that the attack on the contracts was barred by res judicata since the heirs as sole stockholders and the theatre corporation were in privity, having mutual relationships to the same rights of property.

The New York position concerning the binding effect of res judicata on

28. N. Y. R. CIV. PRAC. §211.

29. 309 N.Y. 605, 132 N.E. 2d 684 (1956).

30. The 1936 contract provided: ". . . if any dispute of any kind or character arises between the parties as to any matter contained in this agreement, then such dispute shall be referred to arbitration."

31. *In re Shea's Estate*, — Misc. —, 115 N.Y.S. 2d 868 (Surr. Ct. 1952); *aff'd per curiam*, 282 App. Div. 1013, 126 N.Y.S. 2d 253 (1st Dep't 1953).

32. *Fulton County Gas & Elec. Co. v. Hudson River Tel. Co.*, 200 N.Y. 287, 296, 93 N.E. 1052, 1055 (1911); *New York State Labor Relations Board v. Holland Laundry*, 294 N.Y. 480, 63 N.E. 2d 68 (1945).

the parties to an action and on their privies is clearly defined.³² Thus, where one person owns all of a corporation's stock, a judgment binding one on a matter of mutual right will also bind the other.³³ The determinative test as to the conclusiveness of a judgment in one action against the same parties in a later action is whether there is such a measure of identity between the two causes of action that a different judgment in the second action would impair rights or interests established by the first action.³⁴ This test articulates the policy that a party should not be permitted to relitigate issues on which a final judgment has been rendered.

Further, since no man should be bound by a judgment to which he was a stranger, conversely, he should be bound by a judgment to which he was not a stranger.³⁵ While the corporate entity is well recognized by law, this same entity will not be allowed to serve as an instrumentality to evade the finality of a former adjudication upon all parties in interest.³⁶ The Court here found therefore that all of the stockholders of a family corporation having participated in the prior adjudication, unfavorable to them, the judgment was binding on the corporation as well.

The result reached by the Court seems manifestly just and promotive of the policy consideration, underlying the doctrine of *res judicata*. It precludes the use of the corporate entity as a device for the relitigation of issues, put to rest by the first judgment.

Evidence—Hearsay Rule

The hearsay rule operates to exclude evidence³⁷ given by a witness that is not based on his own knowledge, but is merely a repetition of something he heard, and which is offered as proof of the truth of the matter contained in the statement.³⁸ Such exclusion is based upon the assumption that the value of the evidence so presented depends upon the competency and credibility of a person or

33. *McNamara v. Powell*, 256 App. Div. 554, 11 N.Y.S. 2d 491 (4th Dep't 1939).

34. *Cromwell v. County of Sac.*, 94 U.S. 351 (1876); *Reich v. Cochran*, 151 N.Y. 122, 45 N.E. 367 (1896); *Schuylkill Fuel Corp. v. B. & C. Nieberg Realty Corp.*, 250 N.Y. 304, 165 N.E. 456 (1929); *Hellstern v. Hellstern*, 279 N.Y. 327, 18 N.E. 2d 296 (1938).

35. *Fish v. Vanderlip*, 218 N.Y. 29, 37, 112 N.E. 425, 427 (1916).

36. *Quaid v. Ratowsky*, 183 App. Div. 428, 432, 170 N.Y. Supp. 812, 815 (1st Dep't 1918), *aff'd*, 224 N.Y. 624, 121 N.E. 887 (1918); *McNamara v. Powell*, 256 App. Div. 554, 558, 11 N.Y.S. 2d 491, 496 (4th Dep't 1939).

37. *Stephens v. Vroman*, 16 N.Y. 381, 18 Barb 250 (1857); *Thompson Co. Inc. v. International Compositions Co. Inc.*, 191 App. Div. 553, 181 N.Y. Supp. 637 (1st Dep't 1920).

38. 2 FORD ON EVIDENCE §169 (1935).