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Civil Procedure And Evidence—Evidence—Hearsay Rule

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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 evidence[37] 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).

persons other than the witness.[39] It is better that a witness testify to what he saw and not to what another saw. If the other person's evidence is of value, he may himself be called as a witness, and in this way the jury may see and hear from actual experience and observe the witness's reactions as he is being subjected to cross-examination. Thus the jury may determine his credibility for themselves and weigh his testimony accordingly.

One exception to the hearsay rule is the "res gestae" rule[40] which allows the introduction of unsworn statements into evidence if such statements are a spontaneous and natural utterance.[41] The necessity for the declaration to be spontaneous and natural is to eliminate any chance of fabrication.[42]

In the instant case,[43] the Court of Appeals held a witness could testify about a statement made by a deceased truck driver concerning the condition of the brakes on a truck. The witness rode alongside deceased and heard him declare, just ten seconds before the accident: "The brakes do not work." Plaintiff was injured in the accident, and her allegation that the accident was caused by defective brakes was supported by this statement, and made out a prima facie case.

There is no doubt that statements made by one person and testified to by another are hearsay declarations and should be excluded, but a too rigid application of the hearsay rule might eliminate the only possible evidence in a case and thus bar many rightful and just claims. This case presents a classic example of a claim that would have been barred but for the res gestae rule.

Admission of Evidence—Hospital Records

A memorandum or record of any act, transaction, occurrence or event is admissible in evidence if the trial court finds that it was made in the regular coure of any business and that it was the regular course of such business to make such memorandum or record.[44] This exception to the usual rules of evidence requiring confrontation and cross-examination of witnesses rests upon the probability of trustworthiness, inherent in routine entries made by the person whose business involves the keeping of such records in its regular course and whose in-

39. *Carrier v. Arrow Exterminating Co.*, 201 Misc. 786, 108 N.Y.S. 2d 603 (1951).
40. 1 WHARTON CRIMINAL EVIDENCE §279 (12th ed. 1955).
41. *People v. Del Vermo*, 192 N.Y. 470, 85 N.E. 690 (1908); *People v. Curtis*, 225 N.Y. 519, 122 N.E. 623 (1919).
42. *Greener v. General Elec. Co.*, 209 N.Y. 135, 102 N.E. 527 (1913).
43. *Swensson v. New York, Albany Despatch Co.*, 309 N.Y. 497, 131 N.E. 2d 902 (1956).
44. N. Y. CIV. PRAC. ACT, §374-a.