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Domestic Relations—Res Judicata in Matrimonial Actions

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the offspring of illegal and immoral relations instead of as an innocent babe in need of security and protection. Thus, the standard of support for the illegitimate child should not be less than that required of the father of the legitimate child. In the long run, the community will realize greater profit in protecting and providing for the innocent child than in merely safeguarding the community charity funds.

This case interprets the New York City Court Act which applies only to the City of New York.[12] Under the Domestic Relations Law, concerning paternity proceedings brought in any other part of the state, support is not narrowly defined.[13] Thus the reasoning of the present decision is more readily applicable to the Domestic Relations Law. With little doubt it can be stated that this decision has initiated a new trend in higher support payments not only in New York City but throughout the entire state.

Res Judicata In Matrimonial Actions

In this state, the conclusiveness of judgments is determined by one of two rules, res judicata and collateral estoppel. Res judicata bars subsequent litigation based on the same cause of action as to issues which were or could have been raised in the former proceeding.[14] The doctrine of collateral estoppel prevents subsequent litigation on a different cause of action as to issues actually and necessarily determined in the prior proceeding.[15] Thus, the determining factor as to what rule shall be applied is the similarity or difference between causes of actions in the two proceedings.

In *Statter v. Statter*[16] plaintiff, wife, brought an action for annulment against her husband on the basis of facts which she had knowledge of in a prior action against her for separation but was unable to prove at that time. Judgment in the separation action was for the husband after the wife admitted the validity of the marriage due to her lack of proof to the contrary. The wife's contention, that since the two causes of action were different and the validity of the marriage had never been contested, she could maintain this action for annulment, was upheld by the lower court and the Appellate Division.[17] The Court of Appeals[18] reversed finding

12. Szwarce v. Buenaventura, 301 N.Y. 558, 93 N.E.2d 448 (1950); Hought v. Light, 275 App. Div. 299, 89 N.Y.S.2d 361 (1st Dep't 1949).
13. N. Y. DOMESTIC RELATIONS LAW §120 provides that:
> The parents of a child born out of wedlock are liable for the necessary support and education of the child. . . .

14. Pray v. Hegeman, 33 Hun. 358 (N.Y. 1885); Matter of N.Y. State Labor Relations Board v. Holland Laundry, 294 N.Y. 480, 63 N.E.2d 68 (1954).
15. Smith v. Kirpatrick, 305 N.Y. 66, 111 N.Y.S.2d 209 (1953).
16. 2 N.Y.2d 668, 163 N.Y.S.2d 13 (1957).
17. 2 A.D.2d 81, 153 N.Y.S.2d 471 (1st Dep't 1956).
18. *Supra* note 16.

that the causes of action were the same since a judgment in the annulment action could destroy or impair the prior separation judgment. Therefore since the finding of a valid marriage was necessary to a separation judgment under Civil Practice Act, section 1161 and its interpretation,[19] the issue of validity could only have been raised in that action. In other words, the lower courts, assuming the causes of actions were different, applied the rule of collateral estoppel whereas the Court of Appeals, after establishing the similarity between the causes of action, applied the doctrine of res judicata.

The decisive test for determining whether a prior cause of action is the same as the one in contention, as applied by the Court of Appeals, is whether the substance of the rights or interests established in the first action will be destroyed or impaired by the second action. This rule seems well established in this state in determining whether or not a decision is res judicata.[20] Moreover, it appears that this test has been followed previously in marital actions in this state since cases with similar fact situations have applied the rule of res judicata.[21]

The dissent does not argue against the applicability of res judicata here, thus, impliedly recognizing that the causes of action are alike. However, they argue from a public policy standpoint that res judicata should not be applied to marital actions, actions of higher importance than others, since the marriage status should not be altered by consent or default basing their claim on analogies to other situations where such a policy was followed.[22] The basis of contention, thus, between the majority and the minority is whether or not the public policy of finality of litigation, the basis of res judicata,[23] should control in marriage actions.

This author must agree with the majority of the Court of Appeals since it can not be doubted that people after litigation determining marital status should not be plagued with the constant fear and apprehension that a later proceeding could completely change that status. Problems as to support of wives and children, legitimacy of children, and remarriage would be measurably increased under a policy that left the marriage status hanging indefinitely on the production of new evidence or the whim of the losing party.

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19. Fischer v. Fischer, 254 N.Y. 463, 173 N.E. 680 (1930); Cherubino v. Cherubino, 284 App. Div. 731, 134 N.Y.S.2d 573 (1st Dep't 1954); Warshor v. Warshor, 130 Misc. 262, 223 N.Y. Supp. 705 (Sup. Ct. 1927).

20. Schuylkill Fuel Corp. v. B. & C. Neiberg Realty Corp., 250 N.Y. 304, 165 N.E. 456 (1929); Bailostok v. Wolfer, 191 Misc. 385, 77 N.Y.S.2d 222 (Sup. Ct. 1947).

21. Durham v. Durham, 99 App. Div. 450, 91 N.Y. Supp. 295 (1st Dep't 1940); Frost v. Frost, 260 App. Div. 694, 23 N.Y.S.2d 754 (1st Dep't 1940); Warshor v. Warshor, 130 Misc. 262, 223 N.Y. Supp. 705 (Sup. Ct. 1927).

22. DeBaillet-Latour v. DeBaillet-Latour, 301 N.Y. 428 94 N.E.2d 715 (1950); Friedman v. Friedman, 140 N.Y. 608, 148 N.E. 725 (1925).

23. Heyman v. Heyman, 175 Misc. 69, 22 N.Y.S.2d 832 (Sup. Ct. 1940).

Moreover, there is protection under Civil Practice Act, section 552[24] which allows a new trial for a party who discovers new evidence. However, because of the time limitation of this statute, protection is not afforded in all circumstances. Thus we come again to a choice between public policies. That choice has been made for the first time by the high court of the state in deciding that res judicata is relevant to actions of separation as well as to other areas of law.

Full Faith And Credit—Foreign Judgment Based On Alienation Of Affections

A judgment of a court of record having jurisdiction of the parties and the cause of action is conclusive in the courts of every state and of the United States.[25] The Constitution of the United States requires that full faith and credit be given to the judgmens of a sister state even though repugnant to the state policy of the forum, and even though the judgment is based on a cause of action arising in the state in which it is sought to be enforced.[26]

In *Parker v. Hoefer*[27] a Vermont judgment was presented in New York for enforcement. The defendant alleges that the judgment cannot be enforced because many of the acts which gave rise to the cause of action occurred in New York and New York by statute has abolished the right of action in such cases (alienation of affections and criminal conversation[28]) within or without the state when the acts occur within New York.[29]

The Court held that the record did not indicate that the Vermont judgment was based solely on transactions occurring in New York. By abolishing the cause of action New York did not abolish actions and judgments rendered in a sister state. The Court was careful to construe the statute to apply only to actions and not to judgments; thereby avoiding a serious constitutional question under the full faith and credit clause of the United States Constitution. This left but a judgment of a sister state presented for enforcement which is based on a cause of action abolished by New York. Such judgments, if the sister state had jurisdiction over the person and the subject matter, are entitled to full faith and credit.[30]

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24. N.Y. CIV. PRAC. ACT §552.
25. Rocher v. McDonald, 275 U. S. 449 (1927); Kenny v. Supreme Lodge of the World, 252 U. S. 411 (1920); Fauntleroy v. Lum, 210 U. S. 230 (1908).
26. Stoll v. Gottlieb, 305 U. S. 165 (1938); Converse v. Hamilton, 224 U.S. 243 (1911); Rocher v. McDonald, 275 U. S. 449 (1927).
27. 2 N.Y.2d 612, 162 N.Y.S.2d 13 (1957).
28. N.Y. CIV. PRAC. ACT §61(b).
29. N.Y. CIV. PRAC. ACT §61(d) states:
> . . . no act hereafter done within this state shall give rise, either within or without this state to any of the rights of action abolished by this article.
30. See notes 25 and 26 *supra;* Full faith and credit is not always an unqualified command, as pointed out by the dissent; for special circumstances not applicable here, see *Pink v. A.A.A. Highway Express,* 314 U. S. 201 (1941); *Alaska Packers Ass'n v. Industrial Accident Commission,* 294 U. S. 532 (1935).