Louisiana Practice - Res Judicata - Master and Servant

Donald J. Tate
NOTES

Control,8 the court, quoting from American Jurisprudence,9 said: "The legislature has no power, under the guise of police regulations, arbitrarily to invade the personal rights and liberty of the individual citizen, to interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations, or to invade property rights." If the court felt that fundamental rights were being invaded under Article 74 as amended, as it seems they did feel, they should have invalidated the law on those grounds.

William J. Doran

LOUISIANA PRACTICE—RES JUDICATA—MASTER AND SERVANT

Plaintiff sued the state, after its waiver of immunity, to recover damages for the death of her husband. Her claim was based solely upon the alleged negligence of the state's employees. In a suit previously instituted against the employees on the same cause of action, the employees had been declared free of fault and judgment had been rendered accordingly. In the present proceedings, the state interposed the exception of res judicata, based upon the judgment in favor of the employees rendered in the prior suit. Held, exception sustained. The Supreme Court has made an exception to the Civil Code requirement of identity of parties for invoking res judicata, and this case falls within the exception. McKnight v. State, 68 So.2d 652 (La. App. 1953).

The Supreme Court decision relied on by the court of appeal is Muntz v. Algiers.1 In that case, plaintiff had sued defendant railway company's lessee for the death of his child, and the lessee had been found innocent of fault. In a contemporaneous action in a different court against defendant railway company as the vicariously liable lessor, plaintiff relied entirely on the alleged negligence of defendant's lessee. Defendant's exception of res judicata, founded on the judgment exonerating the lessee rendered while the suit against the defendant lessor was pending, was sustained. Article 2286 of the Civil Code, from which the Louisiana principles of res judicata emanate, was not mentioned in the court's opinion.

9. 11 AM. JUR. 1078, § 303 (1937).
Article 2286 provides: "The authority of the thing adjudged takes place only with respect to what was the object of the judgment. The thing demanded must be the same; the demand must be founded on the same cause of action; the demand must be between the same parties, and formed by them against each other in the same quality." (Italics supplied.) Certainly the language of the article is clear and seems to admit of no exception. On the basis of the same requirement of identity of parties in the French archetype of Article 2286, French commentators who have considered the question presented in the instant case and *Muntz v. Algiers* believe that the authority of the thing adjudged would not avail the defendant in the second suit under French law.\(^2\) It is therefore submitted that the decisions in the present case and *Muntz v. Algiers* cannot be supported by the basic Code provision. Assuming *arguendo* that the courts were authorized to make an exception to the requirements of the article, is the rule so established sound? This discussion contemplates a fact situation involving the completely vicarious liability of one party for the alleged fault of another who is also liable. For convenience, these parties will be designated "master" and "servant," indicating the context to which the discussion is most pertinent.

The rule of the present case is the rule at common law.\(^3\) Commenting on its formulation in the *Restatement of Judgments*,\(^4\) the American Law Institute presents and attempts to answer some of the questions raised by its application. Most striking is the apparent unfairness of making an adverse judgment in a suit against the servant a complete bar to a suit against the master without, conversely, making a favorable judgment in the first suit binding on the master as well as the servant. The Institute dismisses this absence of mutuality as unimportant when the plaintiff has had his day in court with an opportunity to present his full case. There hardly seems to be the force in the circumstance of plaintiff's having had a day in court that would vindicate the partiality of the rule. In practice, it gives the master two opportunities to escape liability, one by assisting in the servant's defense and another by conducting his own. On the

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4. Id. at 473.
other hand, the plaintiff who loses his suit against the servant loses all. If he is successful, the common law does accord his judgment against the servant the force of a rebuttable presumption in his suit against the master; but the fact remains that the master is not bound. Plaintiff ordinarily can protect himself by joining master and servant as parties defendant. But in cases like the present one, where an attempt to make the state a party defendant prior to its waiver of immunity would be a vain gesture, plaintiff is powerless to avoid the effects of the rule. Nor can he sidestep it in cases like *Muntz v. Algiers*, where the parties defendant are not amenable to suit in the same court.

Interests other than the plaintiff's are to be considered, however. "If the State has afforded an opportunity to the parties to litigate their claims and a final judgment has been rendered, it is to the public interest that they should not be permitted to relitigate the same matters." At the root of this interest is what one French writer has called the dogma of the judge's infallibility. Successive contrary judgments on the same questions of law and fact would tend to lower the station of the courts in the public mind. This danger appears in bold relief in fact situations like the ones in question. The master may recover from the servant that which he has been condemned to pay a third party who has suffered damage as a consequence of the servant's fault. Suppose that, in a suit against the servant alone, he has been declared free from blame; and, in a subsequent suit against the master, the master has been held liable to the injured plaintiff on the basis of the servant's fault. This would be possible under the rule proposed by plaintiff in the instant case. The fallibility of the courts would be dramatically displayed in the master's suit against the servant for indemnification. The servant would have a judgment pronouncing him innocent of any fault and the master would have a pronouncement of equal dignity to the contrary. The effect of this anomaly on the layman's respect for the law and the courts is not difficult to imagine. Moreover, judgment in favor of the servant in the master's suit would be unfair to the master; and judgment for the master would in effect permit

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5. *Id.* at 481.
6. *Id.* at 9.
the plaintiff to recover from the servant indirectly, via the master, that which a court had decided he could not recover directly. It is upon this latter consideration that the decision in Muntz v. Algiers was based. These bizarre results are avoided by the application of the rule of both the common law and the present case, that a judgment in favor of the servant on the merits is a bar to a subsequent action against the master. But then the injustice to the plaintiff previously discussed is encountered.

It is submitted that Article 2286 does not represent the legislature's choice of horns in this dilemma. It is unlikely that the problem was foreseen at all by the redactors. Article 2320 indicates that the redactors expected the master's responsibility for his servant's torts to arise only when some fault was imputable to him. If this effect were given the article, the problem of the instant case would never arise, for the suit against the master would be predicated on the master's fault, which would not have been adjudicated in a suit against the servant based upon the servant's fault. For this reason, Article 2286 cannot realistically be said to apply to the problem at hand. The court in Muntz v. Algiers did not expressly attempt to make an exception to Article 2286 in arriving at its decision. Although the case was presented by way of an exception of res judicata, the article was not mentioned in the court's opinion proper. The decision was based upon the court's assumption that a judgment against the lessor would entitle him to indemnification from the lessee, despite the lessee's acquittal of fault in the previous suit, and that it would be grossly unfair to let the plaintiff collect from the lessee indirectly what a court had finally decided the lessee did not owe him. It could have been based as well on the contrary assumption that the lessor would not have been entitled to recoupment from the lessee, and that judgment against the master would have been, for that reason, an injustice to him. If this had been the basis of the decision in Muntz v. Algiers, authority to support it would seem to be available. Article 3061, in the title of the Civil Code on suretyship, provides that "The surety is discharged when by the act of the creditor, the subrogation to his rights, mortgages and privileges can no longer be operated in favor of the surety."

9. Art. 2320, La. Civil Code of 1870: "Masters and employers are answerable for the damage occasioned by their servants and overseers, in the exercise of the functions in which they are employed. . . . In the above cases, responsibility only attaches, when the masters or employers . . . might have prevented the act which caused the damage, and have not done it."
The analogical application of this provision would have been nothing unusual in a civilian jurisdiction, where, traditionally, code provisions are held in high regard and applied generously to factual contexts not within the strict purview of their terms. Such an application of Article 3061 in the instant case and Muntz v. Algiers would have led to the result which the court thought desirable without exposing the court to suspicion that it disregarded the plain letter of the law.

It is therefore submitted that the instant case and the enigmatic decision in Muntz v. Algiers do not reach wrong results. Both can be justified, not as making an exception to Article 2286, which admits of no exception and is of doubtful application, but as reaching the result which the legislature dictated in the analogous situation contemplated by Article 3061. Although the rule they established is, as suggested above, unfair to plaintiffs, this unfairness can be offset by according a judgment obtained against the servant considerable weight as evidence of the servant's fault in the subsequent suit against the master. If this were done, the added risk to which the master would be exposed, that the plaintiff would seek to obtain a judgment against the servant collusively, should serve to deprive plaintiffs of cause to complain of the rule.

Donald J. Tate

**LOUISIANA PRACTICE—SPLITTING CAUSES OF ACTION**

Plaintiff filed suit to recover for property damage sustained in an automobile collision and, prior to trial, filed a second suit against the same defendants for personal injuries arising from the same accident. Trial of the property damage suit resulted in a judgment for plaintiff, which was paid by defendants within a few days. At that time a release was executed, signed only by plaintiff, which recited:

"[T]his release shall in no way affect [plaintiff's] claim for injuries . . . asserted against [defendants] in a second suit now pending in the [same court]. The release herein granted

11. RESTATEMENT, JUDGMENTS 481 (1942).