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LOUISIANA PRACTICE—APPLICATION OF THE EXCEPTION OF  
RES JUDICATA IN PETITORY ACTIONS

Plaintiff, having brought an unsuccessful petitory action in the federal courts<sup>1</sup> wherein it sought to be declared the owner of certain mineral rights, instituted a subsequent suit in the Louisiana district court based on a different cause of action against the same parties, again seeking recognition as the owner of the identical mineral interest. The trial court, sustaining the defendant's exception of *res judicata*, dismissed plaintiff's suit. On appeal, *held*, affirmed. The cause of action relied on by plaintiff in the instant case existed at the time of the prior suit and was within the knowledge of the plaintiff. Therefore, the exception of *res judicata* was properly sustained. *Brown Land & Royalty Co. v. Pickett*, 226 La. 88, 75 So.2d 18 (1954).

Article 2286 of the Louisiana Civil Code of 1870 provides the requisites for the maintenance of the exception of *res judicata*.<sup>2</sup> In most cases the article is very strictly construed so that the exception will only be sustained when the thing demanded is the same, the demand is founded on the same cause of action, and the demand is between the same parties and formed by them against each other in the same quality as in the previous action.<sup>3</sup> In spite of the unambiguous language of article 2286, however, numerous decisions<sup>4</sup> can be found that apparently reflect the influence of the common law rule that

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1. First suit was predicated on assertion that certain instruments executed by vendor's children were sufficient to create title in vendor of minerals claimed or to estop the children from denying such title. The instant suit was based on a contention that the warranty in vendor's deed to plaintiff's ancestor in title was binding against the children since they had tacitly accepted vendor's succession. Plaintiff alleged that this tacit acceptance was not within his knowledge at the time of the first suit.

2. Art. 2286, LA. CIVIL CODE OF 1870: "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."

3. *Iselein v. C. W. Hunter Co.*, 173 F.2d 388 (5th Cir. 1949) (the exception of *res judicata* is *stricti juris*, and any doubt, as to identity of two claims must be resolved in favor of parties sought to be concluded by judgment); *Durmeyer v. Streiffer*, 215 La. 585, 41 So.2d 226 (1949); *Elfer v. Marine Engineers Beneficial Ass'n*, 7 So.2d 409 (La. App. 1942); *Schexnayder v. Unity Industrial Life Ins. Co.*, 174 So. 154 (La. App. 1937). For an excellent discussion on *res judicata*, see Comment, *Res Judicata—"Matters Which Might Have Been Pleaded,"* 2 LOUISIANA LAW REVIEW 347, 491 (1940).

4. *E.g.*, *Wells v. Files*, 136 La. 125, 66 So. 749 (1914); *Schwartz v. Siekmann*, 136 La. 177, 66 So. 770 (1914); *Choppin v. Union Nat. Bank*, 47 La. Ann. 660, 17 So. 201 (1895); *Trescott v. Lewis*, 12 La. Ann. 197 (1857); *McMicken v. Morgan*, 9 La. Ann. 208 (1854).

res judicata includes all matters that *might* have been raised and decided in the prior case. The apparent conflict between these decisions and the Code was discussed in *Hope v. Madison*,<sup>5</sup> where the court recognized certain situations in which res judicata includes that which might have been pleaded.<sup>6</sup> Thus, although our courts do not actually rely on the common law rule of res judicata,<sup>7</sup> they recognize in certain types of cases<sup>8</sup> an exception to the general rule of article 2286 that "the demand must be founded on the same cause of action."

The exception to this general rule was first applied in a petitory action in *Shaffer v. Scuddy*.<sup>9</sup> It has since been applied consistently in cases involving subsequent petitory actions for the same property where (1) the parties are the same and appear in the same quality, and (2) titles or defenses urged in the second suit were available at the time of the original action.<sup>10</sup> A party to the original action, who subsequently acquires a new cause of action, will not be precluded from asserting it.<sup>11</sup> Although the parties in a subsequent petitory action are different, an exception of res judicata may be sustained if there is a

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5. 194 La. 337, 193 So. 666 (1940).

6. *Hope v. Madison*, 194 La. 337, 343, 193 So. 666, 667 (1940). The court recognized three exceptions to the strict application of the provisions of article 2286 which are as follows: (1) Breach of contract or single tort gives rise to but one cause of action. *But see Quarles v. Lewis*, 75 So.2d 14, 17 (La. 1954), where the court treated this not as an exception to article 2286 but as "judicial estoppel." (2) In seeking injunction against the execution of a judgment, or a writ of seizure and sale in executory process, a litigant must set out all grounds or reasons therefor which existed at the time of his application. (3) Parties litigant in a petitory action must set up whatever title or defense they have.

7. *Woodcock v. Baldwin*, 110 La. 270, 275, 34 So. 440, 441 (1902): "The doctrine of the common law courts that res judicata includes not only everything pleaded in a cause, but even that which might have been pleaded, does not obtain generally under our system."

8. See note 6 *supra*. *But see Quarles v. Lewis*, 226 La. 76, 75 So.2d 14 (1954); *Himel v. Connely*, 195 La. 769, 197 So. 424 (1940), which recognized additional exception in suits for partition or division of real estate.

9. 14 La. Ann. 575 (1859) (plaintiff had previously defended a petitory action brought by the present defendant by setting up title through X. Having been cast in the prior suit, he then brought this action, alleging title to the same property through Y; the court held that the prior judgment constituted res judicata to the second suit). See Comment, *Res Judicata—"Matters Which Might Have Been Pleaded,"* 2 LOUISIANA LAW REVIEW 491, 498 (1940).

10. *E.g.*, *Adkins' Heirs v. Crawford*, 209 La. 46, 24 So.2d 246 (1945); *Gajan v. Patout & Burguières*, 135 La. 156, 65 So. 17 (1914); *Lindquist v. Maurepas Land & Lumber Co.*, 112 La. 1030, 36 So. 843 (1903); *Howcott v. Pettit*, 106 La. 530, 31 So. 61 (1901); *Brigot's Heirs v. Brigot*, 49 La. Ann. 1428, 22 So. 641 (1897).

11. *Buillard v. Davis*, 185 La. 255, 169 So. 78 (1936) (purchases, allegedly made after a petitory action, could be subsequently relied on as new cause of action in second suit for title of same property as between same parties). See also *Gajan v. Patout & Burguières*, 135 La. 156, 65 So. 17 (1914).

sufficient privity of interest between them and the original parties to the first suit.<sup>12</sup> The court, in *Lindquist v. Maurepas Land & Lumber Co.*,<sup>13</sup> extended the scope of application of the exception of res judicata in petitory actions. In that case, the plaintiff (Lindquist) instituted a petitory action to be recognized as owner of certain swamp lands, basing his claim on rights acquired by possession under title held by the state with the intention of establishing a homestead. Previously, in a petitory action for the same property, a default judgment had been rendered against Lindquist, establishing title in the Maurepas Land & Lumber Company. The court, in sustaining the defendant's exception of res judicata, obviously felt that, although Lindquist had no absolute title at the time of the default judgment, he should have set up the outstanding title which existed in the state, and advanced his rights as a homesteader on the property. The effect is to require a party in the original real action to set up not only any absolute title or defense then existing in his favor, but also to advance any inchoate claims or rights in the property which might ripen into ownership.

In the instant case two of the "identities" generally required for maintaining an exception of res judicata were present, but the cause of the action was not the same as that relied upon in the first petitory action. Relying on dictum found in *Gajan v. Patout & Burguières*<sup>14</sup> as a defense to the defendant's plea of res judicata, the plaintiff insisted that the cause of action on which it relied was not within its knowledge at the time of the original action. In effect, the plaintiff contended that parties litigant in a second petitory action are only precluded from urging those titles, defenses, and real rights that were within their knowledge at the time of the original petitory action. The court, however, expressly found that the plaintiff had knowledge at the time of the original suit of the cause of action on which it relied in the instant case and sustained the defendant's exception of res judicata. This ruling therefore leaves open the question of whether a cause of action which existed at the time of the original petitory action but was not within the knowledge

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12. *Heroman v. Louisiana Institute of Deaf and Dumb*, 34 La. Ann. 805, 814 (1882) ("No principle of the law is more inflexible than that which fixes the absolute conclusiveness of such a judgment upon the parties and their privies."). See also *Norah v. Crawford*, 218 La. 433, 49 So.2d 751 (1950); *Howcott v. Pettit*, 106 La. 530, 31 So. 61 (1901).

13. 112 La. 1030, 36 So. 843 (1903).

14. 135 La. 156, 177, 65 So. 17, 25 (1914) ("At his command or within his knowledge"). See also *Typhoon Fan Co. v. Pilsbury*, 166 La. 883, 118 So. 70 (1928).

of the plaintiff at that time may form the basis of a new petitory action.<sup>15</sup>

Although the rule as illustrated by the instant case, that *res judicata* includes that which might have been pleaded in a prior suit, constitutes a departure from the strict notions of *res judicata* as codified in Louisiana law, it is based upon sound reasoning. The reduction of unnecessary and harassing litigation, which is the objective of the doctrine of *res judicata* in any litigation,<sup>16</sup> is even more important in cases involving title to real property. The desirability of providing some measure of stability regarding title to real estate<sup>17</sup> is ample justification for the exception as applied in petitory actions.

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LOUISIANA PRACTICE—FILING OF DILATORY EXCEPTIONS—WAIVER  
OF EXCEPTION TO JURISDICTION *Ratione Personae*

Plaintiff proceeded by nonresident attachment to be declared owner of a seized certificate to do business and for damages for loss of profits occasioned by the defendant's breach of contract to deliver the certificate. After denial of his motion to dissolve the attachment, defendant filed exceptions to the jurisdiction *ratione personae* and jurisdiction *ratione materiae*, requesting that these exceptions "be considered in accordance with their number and/or the order in which they appear."<sup>1</sup> On rehearing of the appeal, *held*, affirmed.<sup>2</sup> Defendant's "exceptions to juris-

15. Numerous common law jurisdictions have held that where a plaintiff has no knowledge or means of knowledge of the omitted items, his ignorance will excuse him, and the judgment in the first action will not bar a subsequent action to recover on the omitted items. See cases collected in Annot., 2 A.L.R. 534 (1919).

16. *Opelousas-St. Landry Securities Co. v. United States*, 66 F.2d 41, 44 (5th Cir. 1933) ("Res judicata is a principle of peace. Under its influence an end is put to controversies."); *Speakman v. Bernstein*, 59 F.2d 523 (5th Cir. 1932) (general welfare and interests of state require that there be an end to litigation); *State v. American Sugar Refining Co.*, 108 La. 603, 32 So. 965 (1902) (time should come when all litigation should cease).

17. Our law has traditionally sought to afford the highest protection to innocent third parties who purchase land, relying upon a recorded transfer or a final judicial determination of title. See *Loranger v. Citizens' National Bank*, 162 La. 1054, 111 So. 418 (1927); *McDuffie v. Walker*, 125 La. 152, 51 So. 100 (1909); *Brown v. Johnson*, 11 So.2d 713 (La. App. 1942).

1. Transcript of Record, p. 47, *Garig Transfer, Inc. v. Harris*, 226 La. 117, 75 So.2d 28 (1954).

2. On the first hearing, the court held that the defendant's submission of the two exceptions at the same time constituted a waiver of the exception to jurisdiction *ratione personae* and cited cases decided prior to the