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Judgments - Res Judicata - Limitation of California Doctrine of Collateral Estoppel in Multiple Claimant Cases

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JUDGMENTS—RES JUDICATA—LIMITATION OF CALIFORNIA DOCTRINE OF COLLATERAL ESTOPPEL IN MULTIPLE CLAIMANT CASES—Plaintiffs were injured when their car was struck by defendant. They commenced separate negligence actions, which were consolidated for trial. These actions resulted in a judgment for plaintiff son, but judgments were entered against the plaintiffs mother and father. These parties were granted a new trial, with no limitation upon the issues to be tried. On the second trial the parents asserted the son's judgment, which had become final and been satisfied, as conclusively establishing defendant's negligence. The trial court ruled against them and submitted the issue of defendant's negligence to the jury. On appeal by the parents, *held,* affirmed. Collateral estoppel does not apply to claims of different persons arising from a single accident. To recover, each claimant must establish the defendant's liability unaided by judgments rendered in favor of other claimants. *Nevarov v. Caldwell,* (Cal. App. 1958) 327 P. (2d) 111.

The common statement of the doctrine of collateral estoppel[1] is that an issue has been conclusively determined between parties where it has been necessarily determined by a final judgment in a previous action between the same parties or their privies.[2] Implicit in this statement is the requirement of mutuality—that the party pleading the former judgment and the party against whom it is asserted must have been parties or privies to the former action.[3] Since the facts of this case do not bring it within a recognized exception to the general rule,[4] plaintiffs' plea would normally be defeated on the ground of lack of mutuality.[5] Plaintiffs, however, relied on the

1 United States v. Moser, 266 U.S. 236 (1924); Cromwell v. County of Sac, 94 U.S. 351 (1876); comment, 65 HARV. L. REV. 818 at 840 (1952).

2 Privity is defined in 1 JUDGMENTS RESTATEMENT §§87-92 (1942).

3 Hornstein v. Kramer Brothers Freight Lines, (3d Cir. 1943) 133 F. (2d) 143; comment, 65 HARV. L. REV. 818 at 855 (1952).

4 Exceptions are made in cases involving derivative liability, master and servant relationship, and indemnitor-indemnitee situations. Elder v. New York and Pennsylvania Motor Express, Inc., 284 N.Y. 550, 31 N.E. (2d) 188 (1940); Good Health Dairy Products Corp. v. Emery, 275 N.Y. 14, 9 N.E. (2d) 758 (1937); Brobston v. Darby Borough, 290 Pa. 331, 138 A. 849 (1927).

5 See 133 A.L.R. 181 at 185 (1941).

decision in *Bernhard v. Bank of America*,[6] which purported to abolish the mutuality requirement in California. It was stated in the *Bernhard* case that a litigant not a party to a former action could plead a final judgment in the former action as an estoppel on an issue there determined against any litigant who was a party or privy thereto.[7] This statement appears broad enough to sanction the offensive use of a former judgment in cases arising from a single accident,[8] although the *Bernhard* case only involved the defensive use of a former judgment. As predicted,[9] the court in the instant case concluded that the *Bernhard* case did not require such a result. The principal reason advanced was that application of an estoppel in favor of multiple claimants would place the defendant at a perilous disadvantage.[10] No victory or number of victories would permit him to assert a favorable judgment against succeeding claimants, but one "aberrational verdict"[11] against him would be given standing as ultimate truth and preclude him in subsequent cases. This would mean that a defendant must litigate to his utmost against every claimant, including those having insignificant claims not worth contesting. With the exception of one commentator,[12] no support can be found for such an anomalous result. The "aberrational verdict" problem is particularly significant because in many instances the defendant is unable to require a joinder of claimants.[13] It is questionable whether the same reasoning should apply to a situation like that in the principal case where there has been a successful joinder or a consolidation for trial. In this situation there is no possibility that one "aberrational verdict" in a series may be used by a subsequent plaintiff who was not involved in the action in which that verdict was rendered. Where defendant has faced all potential claimants in the first trial, it would seem reasonable to hold that

6 19 Cal. (2d) 807, 122 P. (2d) 892 (1942).

7 See Bernhard v. Bank of America, note 6 supra, at 812.

8 Note, 57 HARV. L. REV. 98 (1943); Currie, "Mutuality of Collateral Estoppel: Limits of the Bernhard Doctrine," 9 STAN. L. REV. 281 (1957).

9 Note, 57 HARV. L. REV. 98 (1943); Polasky, "Collateral Estoppel—Effects of Prior Litigation," 39 IOWA L. REV. 217 (1954); Currie, "Mutuality of Collateral Estoppel: Limits of the Bernhard Doctrine," 9 STAN. L. REV. 281 (1957).

10 The court also stated that application of an estoppel would promote vexatious litigation by requiring the defendant to appeal the insignificant judgment in favor of the son in order to keep the issue of his negligence open on the second trial. Yet failure to apply the estoppel has required relitigation of the issue of defendant's negligence on the second trial. In short the problem presented by this case is not solved by the policy of putting litigation to an end.

11 The term is coined by Currie to describe the one imperfect verdict that a jury may render against a defendant, after he has successfully defended against several plaintiffs on the same issues. Currie, "Mutuality of Collateral Estoppel: Limits of the Bernhard Doctrine," 9 STAN. L. REV. 281 (1957).

12 Von Moschzisker, "Res Judicata," 38 YALE L. J. 299 at 303 (1929).

13 This is generally the result of jurisdictional difficulties. See the discussion by Currie, "Mutuality of Collateral Estoppel: Limits of the Bernhard Doctrine," 9 STAN. L. REV. 281 at 287 (1957).

he has had his day in court on the issues involved, and that he may not again litigate them in the event that new trials are granted some of the plaintiffs.

Even if this rationale were accepted, however, an alternative justification for the result in the principal case might be based on a recognition of the distinction between offensive and defensive uses of collateral estoppel.[14] Within certain limits, the plaintiff's control over the time and place of trial may be of great advantage. It may then be reasonable, in a second action by a losing plaintiff, to allow the subsequent defendant to make defensive use of the prior judgment. This was essentially the situation in the *Bernhard* case. On the other hand it may well be unfair to permit a subsequent plaintiff offensively to use a prior judgment against a losing defendant where the prior trial took place in a judicial climate relatively unfavorable to the defendant. This reasoning diminishes in force, however, if the court in the second action should determine that the losing defendant was not at a disadvantage in the earlier litigation. Since the instant case is silent on this point, it is questionable whether this theory can be considered a valid ground for its decision. In any event, the principal case has made a significant contribution to California law by declaring the policy that collateral estoppel does not apply in favor of multiple claims arising from a single accident.

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[14] The distinction between offensive and defensive uses of collateral estoppel is discussed by Currie, "Mutuality of Collateral Estoppel: Limits of the Bernhard Doctrine," 9 STAN. L. REV. 281 at 289 (1957); and by Polasky, "Collateral Estoppel—Effects of Prior Litigation," 39 IOWA L. REV. 217 at 246 (1954).