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RES JUDICATA---STATE COURT'S DISMISSAL AS A BAR TO A NEW SUIT ON THE SAME CAUSE IN A FEDERAL COURT EXERCISING DIVERSITY JURISDICTION

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RES JUDICATA—STATE COURT'S DISMISSAL AS A BAR TO A NEW SUIT ON THE SAME CAUSE IN A FEDERAL COURT EXERCISING DIVERSITY JURISDICTION—A citizen of Virginia brought suit in a North Carolina court against a citizen of North Carolina for a deficiency judgment on a note executed in Virginia for the purchase of land in Virginia. Defendant's demurrer to the complaint on the ground that a North Carolina statute [1] precluded recovery was overruled; defendant appealed. In spite of plaintiff's contention that the statute was an invalid abridgment of the full faith and credit clause of Article IV of the Constitution of the United States, the North Carolina Supreme Court held that the statute effectively barred the action from the state courts and dismissed the case.[2] Plaintiff then brought suit in the United States District Court for the Western District of North Carolina on the same cause of action invoking diversity jurisdiction; defendant pleaded the state judgment in bar. The district court gave judgment for plaintiff on the ground that the state could not limit federal jurisdiction by procedural legislation; [3] the Circuit Court of Appeals for the Fourth Circuit affirmed.[4] On certiorari to the Supreme Court of the United States, *held*, reversed. The North Carolina Supreme Court's adjudication barred the action in the federal court; plaintiff could contest the correctness of the decision only by appeal from the state court. *Angel v. Bullington*, (U.S. 1947) 67 S. Ct. 657.

The majority opinion expressed by Justice Frankfurter, indicates that the constitutional question involved in the state court's decision could not be raised again. The court does not regard the jurisdiction of the federal court as different, in this instance, from that of the state court; [5] thus the jurisdictional issues are identical, and the traditional definition of res judicata [6] bars the second suit.

[1] "In all sales of real property by mortgagees and/or trustees under powers of sale contained in any mortgage or deed of trust executed after February 6, 1933, . . . the mortgagee or trustee or holder of the notes secured by such mortgage or deed of trust shall not be entitled to a deficiency judgment on account of such mortgage, deed of trust or obligation secured by the same. . . ." N.C. Gen. Stat. (1943) § 45-36, N.C. Pub. Laws (1933) c. 36.

[2] Bullington v. Angel, 220 N.C. 18, 16 S.E. (2d) 411 (1941).

[3] Bullington v. Angel, (D.C. N.C. 1944) 56 F. Supp. 372.

[4] Angel v. Bullington, (C.C.A. 4th, 1945) 150 F. (2d) 679, noted, 24 N.C. L. REV. 267 (1946).

[5] "For purposes of diversity jurisdiction a federal court is 'in effect, only another court of the State.'" Principal case at 659. See also, Guaranty Trust Co. v. York, 326 U.S. 99 at 108, 65 S. Ct. 1464 (1945); Madisonville Traction Co. v. Saint Bernard Mining Co., 196 U.S. 239 at 253, 25 S. Ct. 251 (1905).

[6] "An adjudication bars future litigation between the same parties not only as to all issues actually raised and decided but also as to those which could have been raised."

The dissent of Justice Reed points out that since the state court was without jurisdiction, its decision was not on the merits and not res judicata.[7] But this objection is not applicable if the premise is granted that a federal court exercising diversity jurisdiction is "in effect" a state court [8] in which judgment of dismissal would be conclusive. As pointed out in the dissent of Justice Rutledge, the court does not expressly decide whether the statute could have withheld federal jurisdiction had the suit been commenced in the federal court; however, the Court designates as "obsolete" a case in which it was held that a New York statute preventing foreign corporations from bringing suit in state courts unless they had complied with local requirements, could not apply to federal courts in diversity cases.[9] The opinion of the North Carolina court that the statute is a part of the state's "adjective" [10] law does not help. The Supreme Court analyses the problem as one not of choice of law, in which the state court's view of a doctrine as "substantive" or "procedural" might be relevant, but of jurisdiction under the *Erie* [11] case, a situation where such labels are at best misleading. In effect, the principal case adds another link in the chain binding federal to state courts.[12] Whether the action could have been maintained in the federal court originally, if it had arisen before a state court decision had been rendered on the constitutional issue, is an interesting question. It is clear, in any case, that the

Principal case at 659. See also Grubb v. Public Utilities Commission of Ohio, 281 U.S. 470 at 479, 50 S. Ct. 374 (1930), and cases there cited. See, generally, von Moschzisker, "Res Judicata," 38 YALE L. J. 299 (1929); Scott, "Collateral Estoppel by Judgment," 56 HARV. L. REV. 1 (1942).

[7] While the supreme court has held that a federal court's adjudication on a subject over which it has no jurisdiction is res judicata in a second action in a federal court, Chicot County Drainage District v. Baxter State Bank, 308 U.S. 371, 60 S. Ct. 317 (1939); Jackson v. Irving Trust Co., 311 U.S. 494, 61 S. Ct. 326 (1941); this doctrine may not be applied in all instances to decisions of state courts lacking jurisdiction over the subject matter, Kloeb v. Armour & Co., 311 U.S. 199, 61 S. Ct. 213 (1940); United States v. United States Fidelity and Guaranty Co., 309 U.S. 506, 60 S. Ct. 653 (1940); Kalb v. Feuerstein, 308 U.S. 433, 60 S. Ct. 343 (1940). For a general discussion of this problem see, Boskey and Braucher, "Jurisdiction and Collateral Attack: October Term, 1939," 40 COL. L. REV. 1006 (1940).

[8] Supra, note 5.

[9] David Lupton's Sons Co. v. Auto. Club of America, 225 U.S. 489, 32 S. Ct. 711 (1912).

[10] "The statute operates upon the adjective law of the state, which pertains to the practice and procedure, or legal machinery by which the substantive law is made effective and not upon the substantive law itself." Bullington v. Angel, 220 N.C. 18 at 20, 16 S.E. (2d) 411 (1941).

[11] Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S. Ct. 817 (1938).

[12] Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S. Ct. 817 (1938); Guaranty Trust Co. v. York, 326 U.S. 99, 65 S. Ct. 1464 (1945) (statutes of limitation) noted in circuit court in 44 COL. L. REV. 915 (1944); Cities Service Oil Co. v. Dunlap, 308 U.S. 208, 60 S. Ct. 201 (1939) (burden of proof); Klaxon Co. v. Stentor Co., 313 U.S. 487, 61 S. Ct. 1020 (1941), and Griffin v. McCoach, 313 U.S. 498, 61 S. Ct. 1023 (1941) (conflicts rules). On this aspect of the principal case see annotation of the North Carolina decision in 136 A.L.R. 1057 (1942); it is noted at length in 24 N.C.L. REV. 267 (1946).

constitutional power of the state to exclude actions of this kind should be tested by appeal from the state court if that forum is the one originally selected.

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