RES JUDICATA-FEDERAL INCOME TAX CASES-EFFECT OF PAST DECISION AS TO LIABILITY FOR FUTURE YEARS

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Res Judicata—Federal Income Tax Cases—Effect of Past Decision as to Liability for Future Years—This action was brought by the United States Government to compel the application of rental sums, due semi-annually by the Western Union Telegraph Company, as lessee, to the Northwestern Telegraph Company, as lessor, to the payment of the lessor's income tax indebtedness for the years 1927-1941. In a prior suit between the same parties for application of other rental sums, due under the same lease, to the lessor's income tax liability for the years 1917-1922, it was determined by the Circuit Court of Appeals of the Second Circuit that the government could not reach these rentals because by the terms of the lease they were payable to the lessor's stockholders rather than to the lessor.² This prior judgment was held to be res judicata in the second suit, notwithstanding the decision had been over-

ruled by the same court which rendered it. 2 United States v. Western Union Telegraph Co., (S.D. N.Y. 1943) 52 F. Supp. 553.

Volume 23 of the Cyclopedia of Law and Procedure (p. 1161) states: "The estoppel of a judgment extends only to the facts as they were at the time the judgment was rendered . . . and when new facts intervene before the second suit, furnishing a new basis for the claims and defenses of the parties respectively, the issues are no longer the same, and consequently the former judgment cannot be pleaded in bar." The question arises, is a change in the law (by virtue of a judicial decision overruling the holding in a prior suit) a change in the facts so as to prevent the operation of estoppel by judgment? The general rule seems to place legislative changes by statute in a different category from judicial changes of mind as to what the law is, and while the former are considered to revise the fact situation so as to create a new title and a new and distinct cause of action in the plaintiff upon different issues, 3 an overruling judicial decision is not such a change in the law as will warrant the court declaring that a new fact situation has arisen. This was indicated in United States v. Moser 4 where the doctrine of collateral estoppel was invoked to require the continued payment of a pension sum to a retired naval officer even though, since the first litigation between Moser and the government, the court, as to other officers in the same category, had found them not legally entitled to that type of pension. It was held that Moser should receive future payments under the prior decision. 5 A departure from this doctrine appears in Blair v. Commissioner 6 where the court said that the ruling in Tait v. Western Maryland 7 applied only where the questions of fact and law in the second suit were essentially the same as in the first; and that an intervening decision of a state court (Illinois) declaring that the law was otherwise than had been held by the federal court in the previous case, created a new situation and res judicata did not operate. The court in the principal case, however, rejects the applicability of the doctrine of

3 Campbell v. Gullo, 142 La. 1082, 78 So. 124 (1918). Where after a judgment was rendered that D was liable for rents under a certain lease, the city passed an ordinance which prohibited the use to which the leased premises were being put. On a suit for rents subsequently falling due it was held the first judgment was not conclusive as to the obligation to pay future rent. The court said the former adjudication is not a bar because for the present "demand is founded upon something that has happened since the judgment was rendered" (p. 1085).
4 266 U.S. 236, 45 S. Ct. 66 (1924).
5 "... a fact, question or right distinctly adjudged in the original action cannot be disputed in a subsequent action, even though the determination was reached upon an erroneous application of the law. That would be to affirm the principle in respect of the thing adjudged but, at the same time, to deny it all efficacy by sustaining a challenge to the grounds upon which the judgment was based." The court thus states the reason for its application of estoppel by judgment in United States v. Moser, 266 U.S. 236 at 242 (1924).
7 289 U.S. 620, 53 S. Ct. 706 (1933) which held that an adjudication of income tax liability for one year was res judicata as to that taxpayer's liability in subsequent years.
the *Blair* case and seeks to distinguish the situation at bar. The court said the intervening decision in *Blair v. Commissioner* was that of a state court interpreting state law, which interpretation, it was bound to apply. It would appear that the distinction is an artificial one at best. Are the intervening, overruling decisions of the Circuit Court of Appeals in this case any less binding upon the federal district court than that of the Illinois Supreme Court in the *Blair* case? It is submitted that the situation in the instant case more closely parallels that in *Blair v. Commissioner* than the *Western Maryland* case. In *Tait v. Western Maryland R. Co.* there was no intervening overruling decision. Thus the facts and law were exactly the same in both suits and res judicata was quite properly applied. However, as the court pointed out in the *Blair* case, where the law has been changed (whether by statute or judicial decision) a new situation arises, new factors come into play, and the former judgment should not be a bar to subsequent actions as an estoppel by judgment.

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8 *304 U.S. 64, 58 S. Ct. 817 (1938).*

9 *Judgments Restatement* (American Law Institute) § 70 (1942) sets forth the following rule: "Where a question of law essential to a judgment is actually litigated and determined by valid and final personal judgment, the determination is not conclusive between the parties in a subsequent action upon a different cause of action, except where both causes of action arose out of the same subject matter or transaction; and in any event it is not conclusive if injustice would result."