Res Judicata -- Judgment in Ejectment Suit as Res Judicata Preventing Restitution of Land

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The result in the instant case is apparently correct, but the rationale of the decision is not clear. The court gives no reason for its decision other than to say dogmatically that "such occupancy (by the possessor of the land) is consistent with, and not as a matter of law adverse to, the possession of the prior lessee." It is believed that the same result could have been reached on the basis of other decisions: First, the timber case, mentioned above, in which the lease was held to create a separate interest in fee in the timber against which adverse possession of the land alone would not be effective; and, second, by reasoning from analogy to the mineral cases.

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A judgment of interpleader, construing a will, gave B a right to rents and profits accruing from a certain tract of land. While an appeal was pending B brought an action in ejectment against A, who was in possession of the tract, and recovered. A did not appeal. The original judgment of interpleader was reversed on appeal, the court construing the will in favor of A. A now brings an action in ejectment to regain possession of the land. Held: The first judgment in ejectment not having been appealed from is res judicata as to the question of the title to the land (Cardozo, Brandeis, and Stone, JJ., dissenting).

The majority of the court explains its decision upon the ground that the original suit in equity for rents and profits and the first suit in ejectment were separate and unrelated suits. Therefore, the reversal of the original judgment did not give grounds for restitution as to the lands in the ejectment suit. The minority contends that the first action in ejectment was dependent upon the interpleader judgment, and that this second suit in ejectment is in effect a suit for restitution to which the plaintiff is entitled.

If the construction placed upon the will by the interpleader judgment—that the title to the land in question was in B—is conclusive until reversed, then the first ejectment judgment was dependent upon the interpleader judgment. The general rule is that where a judg-

Southwestern Lumber Co. of N. J. v. Evans, supra note 4.
Claybrooke v. Barns; Kentucky Block Cannel Coal Co. v. Seawell, both supra note 5.
Reed v. Allen, 286 U. S. 191, 52 Sup. Ct. 532, 76 L. ed. 749 (1932). This case has been commented upon in (1932) 88 U. of Pa. L. Rev. 77.
ment determines the title under which a party claims, it is res judicata as to any other property or right claimed under the same title in a subsequent action between the same parties. Applying the rule to the instant case it seems clear that the trial court in the first action in ejectment was bound by the previous construction of the will. In fact, the only defense pleaded by A in the first ejectment action was in the nature of a plea in abatement on the grounds that the question of title was pending on appeal. Therefore, a reversal of the interpleader judgment ought to give grounds for restoring the parties to their original position.

The doctrine of restitution operates to restore to a litigant that which is lost by reason of the subsequent reversal of a judgment. But apparently the courts have limited this rule to prop-

2 "But where a judgment determines the title or right under which a party claims, it is decisive as to any other property or right claimed under that same title." 34 C. J. 906. Brock v. Boyd, 211 Ill. 290, 71 N. E. 995, 103 Am. St. Rep. 200 (1904) (a decree in adoption proceedings on which title depends is res judicata as to another suit for partition of land); Mass. v. Brant, 216 Mo. 64, 116 S. W. 503 (1909) (judgment declaring void a judgment under which land was sold is res judicata as to purchaser of land); Angelo v. Aldridge, 164 Ill. 388, 45 N. E. 722 (1896) (a decree for rents and profits is res judicata as to subsequent suit for partition); Sou. Pac. Ry. v. United States, 163 U. S. 1, 18 Sup. Ct. 18, 42 L. ed. 355 (1897); Johnson v. Victoria Chief Copper M. & S. Co., 150 App. Div. 653, 135 N. Y. Supp. 1070 (1912); Re Lart, [1896] 2 Ch. 788, 65 L. J. Ch. N. S. 846, 72 L. T. N. S. 175; Carson v. McCormick Harvesting Machine Co., 18 Tex. Civ. App. 225, 44 S. W. 406 (1898).


3 "Where a judgment or decree of an inferior court is reversed by a final judgment in a court of review, a party is in general entitled to restitution of all things lost by reason of the judgment in the lower court." 18 Enc. Pl. & Pr. 871.


In spite of the general application of the doctrine to "all things lost by reason of a judgment" it has been held not to apply where the judgment was voluntarily paid. Teasdale v. Stroller, 133 Mo. 645, 34 S. W. 873 (1896); Travelers Ins. Co. v. Heath, 95 Pa. St. 333 (1880). Contra: Schooley v. Hashley, 72 N. Y. 578 (1878); Hillier v. Hillier, 35 Ohio St. 645 (1880). Neither does it apply where the specific property cannot be returned. Farmer v. Rogers, 10 Cal. 335 (1858). Nor after the property is in the hands of an innocent purchaser for value. Vogler v. Montgomery, 54 Mo. 577 (1874); Dodson v. Butler, 101 Ark. 416, 142 S. W. 503, 39 L. R. A. (N. S.) 1100, Ann. Cas. 1913E 1001 (1912). Nor against one who did not enter on land under the one whose title was declared void by the reversal. Mayo v. Sprout, 45 Cal. 39 (1872).

But restitution can be had for crops grown on land between trial judgment and reversal by Supreme Court. Stanborough v. Cook, 86 Iowa 741, 53 N. W.
property taken directly under the judgment which is reversed. However, this limitation was placed upon the doctrine when the technical rules of procedure were emphasized more than they are now. Then, too, those cases in which restitution was refused, because the property was not taken directly under the judgment that was reversed, did not involve the doctrine of *res judicata* between the two judgments. In the instant case there is a loss of property by virtue of a judgment (interpleader) which has been subsequently reversed. It would be consistent to extend the doctrine to this case.

The majority of the court recognizes the equities in favor of *A* by admitting that if the first judgment in ejectment had been appealed from, it probably would have been reversed; or the appeal would have been consolidated with the appeal in the interpleader suit. They insist, however, that an appeal in the first ejectment action is the only remedy available to *A*. But this is putting rules of procedure above the justice of the cause. The second judgment in ejectment, as Cardozo, J. suggests, should be treated as a suit for restitution.

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131 (1892). It also applies when more land is taken in ejectment than is called for by the judgment. Russel v. Webb, 96 Ark. 190, 131 S. W. 456 (1910). Or when land other than that included in a judgment is taken. *Ex parte* Reynolds, 1 Cai. 500 (N. Y. 1804); Shaw v. Bayard, 4 Pa. 257 (1846).

*Durham & N. W. Ry. Co. v. N. C. Ry. Co., 108 N. C. 304, 12 S. E. 983 (1890); Eilers v. Wood, 64 Wis. 422, 25 N. W. 440 (1885); Murry v. Berdell, 98 N. Y. 480 (1885); Reynolds v. Reynolds, 67 Cal. 20, 8 Pac. 184 (1885).*


The court cites Butler v. Eaton, *supra* note 6, as clearly pointing out that this was the only remedy available in this situation. But the case does not point this out. It merely decides that when a previous judgment, upon which the case before it depended, has been reversed, it can reverse the judgment itself instead of sending it back to the court below.

The proper way to obtain a writ of restitution at common law was by a motion. Sometimes, however, the appellate court would, when it reversed the judgment, direct the return of all property taken under authority of the judgment. There is some authority for allowing an action for money had and received in this situation. Haebler v. Meyers, 132 N. Y. 363, 30 N. E. 963, 15 A. L. R. 588, 28 Am. St. Rep. 589 (1892) is an illustration of such an action being allowed. It would not be radically out of line either with the modern attitude toward procedure or with the idea of restitution to allow this second action in ejectment to be treated as a suit for restitution.