74

196 - 322

Record No. 4178

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

EDNA E. PETRUS, Plaintiff in Error,

versus

CHARLES ROBBINS, Defendant in Error.

PETITION FOR APPEAL.

LOUIS KOUTOULAKOS
PAUL VAROUTSOS
Attorneys
2054 N. 14th Street
Arlington, Virginia

196 VA 322 -
Petition - for - Appeal

INDEX TO PETITION

Record No. 4178

Table of Citations.

Cases.

Secondary Authorities.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 4178

EDNA E. PETRUS, Appellant,

versus

CHARLES ROBBINS, Appellee.

PETITION FOR APPEAL.

To the Honorable the Justices of the Supreme Court of Appeals of Virginia:

Your petitioner, Edna E. Petrus, respectfully represents that she is aggrieved by the final judgment of the Corporation Court for the City of Alexandria, Virginia, entered on the 10th day of December, 1952, sustaining defendant's plea of *res judicata* and estoppel.

PROCEEDINGS.

A suit was filed in the Civil and Police Court of the City of Alexandria, Virginia, by Charles Robbins, appellee herein, against Edna E. Petrus, appellant, on the 4th day of June, 1952, for property damage arising out of an accident between two vehicles operated by the parties hereto. The appellant, Edna E. Petrus, filed a counterclaim in this suit for property damage to the auto driven by her and owned by her husband. This cause was set for trial on July the 3rd, 1952.

On June 30th, suit was filed by Edna E. Petrus and by her husband against Charles Robbins, for personal injuries suffered by Mrs. Petrus, in the same accident.

2* *On July 3rd, the claim of Charles Robbins and counterclaim of Mrs. Petrus was heard in the Civil and Police Court. Although it was brought out by Robbins' counsel that Mrs. Petrus was not the owner of the auto and that her counterclaim should be dismissed, the Civil and Police Court determined on both claims that both parties were guilty of negligence, and denied recovery, rendering judgment for each on the claim of the other. There was no appeal from this verdict, and judgment became final as to both.

In the suit in the Corporation Court of Alexandria, Virginia, by amendment to the pleadings, Mr. Petrus was dropped and the parties became Edna E. Petrus and Charles Robbins, as in the Civil and Police Court suit. The defendant filed its plea of *res judicata* and estoppel based on the verdict of the Civil and Police Court. The Corporation Court sustained defendant's plea from which order appellant excepted and noted her appeal.

ERROR ASSIGNED.

The error assigned in the notice of appeal was the action of the lower court in sustaining the plea of *res judicata* and dismissing the claim of appellant based on personal injuries.

QUESTION INVOLVED.

The question involved is whether or not the judgment rendered in the Civil and Police Court of Alexandria, against the parties hereto, in a claim based on property damage operated as a bar or as an estoppel to a subsequent suit in the Corporation Court, based on personal injuries.

3* *ARGUMENT.

Point I.

DID THE JUDGMENT OF THE POLICE COURT BASED ON A CLAIM FOR PROPERTY DAMAGE OPERATE AS *RES JUDICATA* AND ESTOPPEL TO A SUBSEQUENT SUIT BASED ON PERSONAL INJURIES, A SEPARATE AND DISTINCT CAUSE OF ACTION AND WHERE THE REAL PARTY IN INTEREST WAS NOT A PARTY TO THE CIVIL AND POLICE COURT SUIT.

Appellant, Edna E. Petrus, brought suit in the Corporation Court for the City of Alexandria, a court of record and of general jurisdiction, on a claim based on personal injuries sustained as a result of a collision between a vehicle owned by her husband and operated by her, and a vehicle operated by the appellee, Charles Robbins. In an earlier proceeding in the Civil and Police Court of Alexandria, a Court not of record and of limited jurisdiction, determined in a property damage claim based on the same collision, that both parties, that is, Edna E. Petrus and Charles Robbins, were guilty of contributory negligence, basing recovery in the property claims.

The doctrine of *res judicata* is one of universal application, and as a principle of law is universally recognized by the courts. As this honorable court stated in the case of *O. A. Patterson* v. *Rosetta Anderson,* 194 Va. 557 at p. 564:

"The doctrine of *res judicata* is a proper and important principle of law and is universally recognized in the courts of this country. It is founded upon the two maxims of law, 'that a man should not be twice vexed for the same cause', and that 'it is for the public good that there be an end to litigation.' 8 Mich. Jur., Former Adjudication, etc. Sec. 3, p. 577. But the doctrine is technical in nature and one who asserts it cannot complain if the proceedings upon which he relies are subjected to technical scrutiny."

4* *The doctrine of *res judicata,* operating as it does to bar a subsequent suit, is closely scrutinized by the courts to determine if it is applicable to the case at hand, wherein the plea is asserted. There are four necessary ingredients, which are fixed requirements and operate as conditions precedent to its application. As stated in *Collins* v. *Treat,* 152 S. E. 205, 208; 108 W. Va. 443:

"*Res judicata* is defined as follows: The doctrine of *res adjudicata* is a very proper and important element of law, though technical in nature. Its purpose is to put an end to litigation, but it is to be applied in the furtherance of justice and not in destruction thereof. There are fixed ingredients which may not ineptly be referred to as conditions precedent to its application. There must be concurrence of four things: (1) Identity in the thing sued for; (2) Identity of cause of action; (3) Identity of persons and of parties to the action; (4) Identity of the quality in the persons for or against whom the claim is made."

And in *C & O Ry. Co.* v. *Rison,* 99 Va. 18, 37 S. E. 320, it was stated that the plea of *res judicata* is good *only* when the cause of action is the same. In the case of *Carter, et al* v. *Hinkle,* 189 Va. 1, the question decided by this Honorable Court was whether or not one who has suffered damage to his property and injury to his person as a result of a single wrongful act, could maintain two separate actions. And Honorable Justice Gregory decided that there were in fact, two causes of action, one for the personal injury and one for the property damage, and the doctrine of *res adjudicata* was not applicable. Virginia thereby adopted the better view, although the minority view, allowing a person suffering an invasion to his personal security and right to property, to bring two actions, and a judgment obtained in any one is not a bar to the other. Consequently, in view of the above decision, there was no iden-
5* tity of causes of action of the *property claim determined in the Police Court and of the personal injury claim filed in the Corporation Court, and the doctrine of *Res Judicata* clearly was not applicable.

Point II.

DID THE JUDGMENT OF THE CIVIL AND POLICE COURT, A COURT OF INFERIOR JURISDICTION, OPERATE AS AN ESTOPPEL TO THE CASE FILED IN THE CORPORATION COURT, A COURT OF RECORD AND GENERAL JURISDICTION, WHERE THE CAUSES OF ACTION ARE DIFFERENT, AND WHERE THERE WAS A FAILURE OF NECESSARY PARTIES IN THE POLICE COURT ACTION.

To ascertain the scope of the estoppel, if. any, to our case at hand, and to determine just what was adjudicated and between what parties, inquiry may extend to the evidence as well as to the pleadings and judgment. 50 C. J. S. Judgments Sec. 712 (d), p. 181.

To uphold his contention of *res judicata* and estoppel, the appellee introduced into evidence a transcript of the record of the proceedings in the Civil and Police Court, relative to the property claims. It should be noted, at the outset, that the Civil and Police Court is one not of record, and of limited jurisdiction. The claim of personal injuries of appellant far exceeded the jurisdiction of that Court and could not be asserted there. It is a general rule of law that where in an action in a court of inferior jurisdiction, a claim available as a counterclaim exceeds the jurisdiction of the Court. the judgment recorded in the action does not preclude the maintenance of an

independent action on the claim. 30 AM Jur., Judg-
6* ments, Sec. 192.

*An examination of the transcript of the Civil and Police Court proceedings introduced by appellee reveals (see M. R., p. 26) that the automoblie was not owned by appellant, Edna E. Petrus, and that she could not assert any counterclaims for damages thereto since, as fully realized by appellee, who through counsel, moved to dismiss her counterclaims (also M. R., p. 26). Consequently, there was a defect of parties as to the counterclaim of Edna E. Petrus, thereby invalidating any judgment against her based on the counterclaims. As stated in *Patterson* v. *Anderson*, 194 Va. 557 at p. 570:

"* * * A valid judgment cannot be rendered where there is a want of necessary parties, and a Court cannot properly adjudicate matters involved in a suit when necessary and indispensable parties to the proceeding are not before it. * * * 49 C. J. S., Judgments, Sec. 27, p. 67. A Judgment rendered where necessary parties are not before the Court does not operate to bar a subsequent action. 30 Am. Jur., Judgments, Sec. 211, p. 947."

The Civil and Police Court did not have a necessary and indispensable party, namely, the owner of the car, thereby it could not render a valid judgment as to the counterclaim filed by appellant. Not having rendered a valid judgment as against her, there was no finding of contributory negligence to estop her from claiming personal injuries. As a general rule, a judgment rendered because of defect of parties *does not* operate to bar a subsequent action. 30 AM Jur., Judgments Sec. 211. And a judgment which is null and void may not be used as a basis for *res judicata* (*sic* estoppel). 30 AM Jur., Judgments Sec. 198.

7* *It is essential that in order to work an estoppel by verdict, the estoppel must be mutual. As stated in Burke Pleading and Practice, 4th Edition, Judgments Sec. 357, at p. 675:

"The general rule and that followed in Virginia and West Virginia is that in order for a former adjudication to operate as an estoppel, the estoppel must be mutual; that is to say the party seeking the benefit of the prior judgment must demonstrate that he would have been prejudiced if the former controversy had been decided the other way. In other words, the proceeding must be concluded as to both litigants or it

cannot be used as an estoppel against either." (see also *Gentry* v. *Farrugia,* (W. Va.) 53 S. E. (2d) 741).

At bar it certainly cannot be said that there is any mutuality within the above definition. In view of *Carter* v. *Hinkle,* 189 Va. 1, the appellant would not have been precluded in her claim for a personal injuries had she recovered in a property action. By very definition, therefor, there could be no estoppel, and the Corporation Court was clearly in error in sustaining the plea.

In *Gentry* v. *Farruggia,* 53 S. E. (2d) 741, decided in West Virginia, in 1949, an action was brought in the Circuit Court of Raleigh County based on personal injuries by Gentry, operator of a vehicle owned by one Bengey. This vehicle was in an accident with that of defendant driver. Gentry was the agent of Bengey, at the time of the accident. Defendant filed a plea of *res judicata,* alleging as a basis, a judgment in his favor rendered against Bengey, by a jury, in a property action. The Circuit Court sustained the plea and certified the question to the Supreme Court of Appeals of West Virginia. The Supreme Court held that the Circuit Court was in error and in reversing stated in effect "that. . . . the relationship of
principal and agent did not create such a *privity of in-
8* terest so that a former judgment would be a bar. The
Court further stating that a privity was based upon a common material interest in the litigated subject matter."

The Court went on to say that the respective rights were separate and distinct, one based on personal injury and one for property damages.

And at p. 743, *supra,* the Court stated *inter alia*s

"*Res Judicata* (estoppel by verdict) works both ways or not at all. If the judgment in the first action against Farruggia had resulted in a judgment in the plaintiff's favor would this plaintiff now have a fixed right to also recover against Farruggia. Would this plaintiff be entitled to a judgment based upon the mere proof of the former recovery? We think not. Both litigants must be alike concluded, or the proceeding cannot be set up as conclusive on either. Bigelow, Estop. 25; Freem. Judgm. Sec. 159; 1 Greene Evid. 249."

How can it be said, in view of the foregoing and of *Carter* v. *Hinkle,* 189 Va. 1, that the action of the Civil and Police Court barred subsequent suit by appellant? To say there was an estoppel by verdict is to disregard completely this Honorable

Court's decision in the *Carter* v. *Hinkle case.* To uphold the Corporation Court's order would be to say that should a decision as to negligence be in favor of a litigant, no matter how small, based on property damages, would estop the losing party to assert any defense, except perhaps as to quantum of damages, in a subsequent suit based on personal injury. An absurd result and certainly not the intended result in view of *Carter* v. *Hinkle.*

The doctrine of *res judicata* (estoppel) is not rigidly enforced where to do so would finally defeat the ends of justice. (*Gentry* v. *Farruggia, supra*). To hold in case at bar that there was an estoppel not *only would defeat the ends of
9* justice, but would pave the way for very small suits to be filed in a county or Police Court, that may be so small as not worth defending, and upon obtaining a verdict, proceed to a higher Court, armed with the verdict and bring a heavy suit on personal injuries to which there could be no defense, except possibly amount of damages.

To rule that an estoppel by verdict and uphold the Corporation Court would accomplish little, and would not achieve the purpose of the rule, which is to conclude litigation, since the *Carter* v. *Hinkle* doctrine permits two suits and as so ably stated by this Honorbale Court in *Carter* v. *Hinkle* at p. 8:

"* * * Rights are too important and liability is too oppressive to be determined and administered in wholesale fashion. * * *"

CONCLUSION.

It is respectfully submitted on behalf of the appellant that:

1. The judgment of the Civil and Police Court did not operate as *res judicata* since the causes of action were separate and distinct.

2. That the judgment of the Civil and Police Court did not operate as an estoppel in view of the absence of a necessary party in interest, the owner of the car, and the lack of "mutuality" required.

The law does not favor the application of the doctrine of *res judicata* or estoppel by verdict where to do so would defeat the ends of justice. And certainly to deny Mrs. Petrus her right to assert her claim for personal injuries would defeat justice.

For the foregoing reasons, your Petitioner respectfully

prays that he may be granted a writ of error to the afore-
10* said judgment of the *Corporation Court of Alexandria, Virginia and that the same be reversed and remanded for a hearing on its merits.

The petitioner requests that he be permitted to supplement this written petition by an oral statement of the reasons for reviewing the judgment complained of.

A copy of this petition was duly delivered on the 3rd day of April, 1953, to E. Waller Dudley, Esq., of Alexandria, Virginia, counsel for appellee.

The petition is to be filed with the Clerk of the Supreme Court of Appeals of Virginia at Richmond, Virginia.

Respectfully submitted this 3rd day of April, 1953.

LOUIS KOUTOULAKOS
PAUL VAROUTSOS
Counsel for Appellant

The undersigned attorneys, duly qualified to practice before the Supreme Court of Appeals of Virginia, do hereby certify and state that in their opinion the judgment complained of ought to be reviewed.

LOUIS KOUTOULAKOS
PAUL VAROUTSOS
Attorneys
2054 N. 14th Street
Arlington, Virginia

Received 4/6/53

H. G. TURNER, Clerk