, & BANKING: Res judicata applied to judgment against a restricted bank.

11-23

November 16, 1933.

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Hon. O. H. Moberly
Commissioner of Finance
Jefferson City, Missouri

Dear Mr. Moberly:

Your letter of November 7th, 1933, received, requesting an opinion of this Department, in which letter a certified copy of a decree of the Circuit Court of Platte County rendered November 4th, 1933, in the case of John W. Walker, Plaintiff, vs. Wells Banking Company, a corporation, Defendant, was enclosed, and later a certified copy of the petition of the plaintiff, answer and entry of appearance of the defendant in the same suit was delivered to this Office to be used in connection with your letter of request; which letter is as follows:

> "Attached hereto is a Decree of the Circuit Court of Platte County, Missouri, rendered in the case of John W. Walker, Plaintiff, vs. Wells Banking Company, a corporation, Defendant, ordering the payment of the sum of $50,270.23 held by the Defendant in the First National Bank of Kansas City and declaring the same to be a trust and preferred charge upon all of the assets of said Defendant until said contract is specifically performed by the Defendant.
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> "For your information, the Defendant, Wells Banking Company, is now and has been since the Banking Holiday in March operating under restrictions, and I hereby request that you furnish me with an opinion, setting out what action, if any, I should take to prevent the payment of this sum of $50,270.23."

For our information you state that the defendant Wells Banking Company, a corporation, is now and has been since the Banking Holiday in March, 1933, operating under restrictions, and our further information is that the plaintiff in this suit was at all times mentioned in said petition, Collector of Revenue of Platte County, Missouri.

This is an equity suit for specific performance of an alleged contract and agreement between the plaintiff John W. Walker and the defendant Wells Banking Company, a corporation, doing a general banking business at Platte City, Platte County, Missouri, praying for an order and judgment of the Circuit Court of said county directing defendant corporation to deliver up to plaintiff on demand all moneys, credits, funds delivered and surrendered by plaintiff to defendant under said contract and agreement, or a judgment and decree that all of the assets of defendant be impressed and charged with a trust to the extent the same had been augmented by the wrongful mingling or disposing of said funds, moneys and credits with the general assets of said bank, and for all other such orders, judgments and decrees and equitable relief as to the court may seem meet and just.

John W. Walker who is, and was, the Collector of Revenue of Platte County, Missouri, and the Wells Banking Company, a corporation, are both residents of Platte County, Missouri, and the Circuit Court of Platte County by the answer and entry of appearance had jurisdiction of the parties, plaintiff and defendant, and the petition states a cause of action against the Wells Banking Company and the court had jurisdiction of the subject matter. The Commissioner of Finance was not made a party defendant in this suit and the bank operating under restrictions was not in the charge and under the control of the Commissioner of Finance so far as the contract and agreement alleged in this petition is concerned, it being an alleged contract and agreement between the plaintiff and the defendant and, therefore, you are not involved in said litigation.

The doctrine of res judicata would apply to this case. This doctrine is classified in two main rules which may be stated as follows:

> "(1) The judgment or decree of a court of competent jurisdiction upon the merits concludes the parties and privies to the litigation and constitutes a bar to a new action or suit involving the same cause of action either before the same or any other tribunal. (2) Any right, fact, or matter in issue, and

> directly adjudicated upon, or necessarily involved in, the determination of an action before a competent court in which a judgment or decree is rendered upon the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and privies whether the claim or demand, purpose, or subject matter of the two suits is the same or not."
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> 34 C. J. p. 743.

And further, it is said in 34 C. J., at page 750:

> "A judgment rendered by a court of competent jurisdiction on the merits is a bar to any future suit between the same parties or their privies, upon the same cause of action, in the same or another court, so long as it remains unreversed and not in any way vacated or annulled."

And in 34 C. J., page 990, it is said:

> "As a general rule a valid and final judgment is binding and conclusive on all the parties of record in the action or proceeding in which the judgment was rendered."

In the case of Fiene v. Kirchoff, 176 Mo. 516, l. c. 525, the Missouri Supreme Court said:

> "In Hope v. Blair, 105 Mo. l. c. 93, Macfarlane, J., aptly stated the law as follows: 'When the court has cognizance of the controversy, as it appears from the pleadings, and has the parties before it, then the judgment or order, which is authorized by the pleadings, however erroneous, irregular or informal it may be, is valid until set aside or reversed upon appeal or writ of error. This doctrine is founded upon reason and the "soundest principles of public policy." "It is one,"

> says the court of Virginia, "which has been adopted in the interest of the peace of society, and the permanent security of titles."'"

In the case of Chouteau v. Gibson, 76 Mo. 38, l. c. 51, Judge Norton said, quoting from the case of Sturgis v. Rodgers, 26 Ind. 1:

> "'A judgment of a court of nisi prius rendered under such circumstances could never be called in question collaterally before the same or any other court. It must be so, also, as to the judgment of the court of last resort when it has jurisdiction, though it mistake the law and err in its judgment. The rule is as essential in the one case as in the other to the repose of society and the stability of private rights. To say that a judgment of affirmance here, within the power of the court to render, when the parties are before the court and the case is brought within its lawful jurisdiction, is not a final end of that litigation, would be a startling doctrine, asserting that a cause can never have a final termination.'"

In the case of Drake v. Kansas City Public Service Company, 41 S. W. (2d) 1067, the court said:

> "It is not necessary to cite authorities to support the proposition that a judgment, legal upon its face, rendered by a court of competent jurisdiction, is binding and conclusive upon the parties to it. Citing Fiene v. Kirchoff, 176 Mo. 516; 34 C. J. 990."

We could cite many other authorities to support this elementary doctrine but we do not think it necessary. Therefore, it is the opinion of this office that this court, having jurisdiction of the parties to the suit and the subject matter, and no timely

motion for new trial was filed and no appeal taken by the defendant, so we are informed, therefore said judgment became a binding decree and judgment of said court and the parties thereto are bound by the decree and judgment. In conclusion, it is our opinion, based on your letter, the petition, entry of appearance and answer furnished us, in the absence of any other qualifying facts outside the record, binding on all of the parties and a final and conclusive judgment and decree of the matter involved.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

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