

**Johnson Co. Vs. Wharton**

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**Court :** US Supreme Court

**Decided On :** Mar-05-1894

**Appeal No. :** 152 U.S. 252

**Appellant :** Johnson Co.

**Respondent :** Wharton

**Judgement :**

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U.S. Supreme Court Johnson Co. v. Wharton, 152 U.S. 252 (1894)

**Johnson Company v. Wharton**

**No. 114**

**Argued November 24, 1893**

**Decided March 5, 1894**

**152 U.S. 252**

*ERROR TO THE CIRCUIT COURT OF THE UNITED*

*STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA*

## SYLLABUS

A judgment recovered in a circuit court of the United States in favor of the plaintiff by the owner of a patent right in an action against a licensee to recover royalties on sales of the patented article, where the sole defense set up was that the articles manufactured and sold by the defendant were not covered by the patent, in which the amount recovered was not sufficient to permit a review by this Court, is a bar to an action in the same circuit court by the same plaintiff against the same defendant, to recover like royalties on other like sales where the same defense is set up, and no other, and the amount involved is sufficient to authorize a review here.

By written agreement executed November 24, 1885, between William Wharton, Jr. & Co., a limited partnership association, and the Johnson Steel Street Rail Company, a corporation -- to be hereafter referred to as the Wharton and Johnson Companies -- the latter acquired the right to make and sell, upon certain conditions, guard rails constructed according to the specifications attached to letters patent granted to William Wharton, Jr., for an improved guard rail.

The present action was brought upon this agreement of license, to recover the stipulated royalties or fees for guard rails sold and delivered by the Johnson Company between January 10, 1888, and June 4, 1889.

In its statement of demand, the Wharton Company averred that the Johnson Company commenced and continued the sale of guard rails, and voluntarily rendered statements and paid

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the stipulated fees, down to January 1, 1887, but refused to pay those due between January 1, 1887, and January 10, 1888, on the ground that the rails made and sold by it were not covered by the Wharton patent; that, in a suit brought by the present plaintiff against the Johnson Company in the Circuit Court of the United States for the Eastern District of Pennsylvania, it was adjudged that the rails sold by the defendant were covered by the Wharton patent, and judgment

was entered for the amount of royalties to January 10, 1888; that from and after the latter date down to the expiration of the patent, June 4, 1889, the defendant continued to sell, under the agreement, rails of the same character as those that had been adjudged to be covered by the above patent.

The Johnson Company, admitting the manufacture and sale by it between January 10, 1888, and June 4, 1889, of certain girder guard rails of steel, averred that those manufactured by it were not such rails as were covered by the Wharton patent. It also admitted that the suit mentioned in the plaintiff's statement was brought and decided as set forth, but insisted that the decision was not binding in the present case,

"because the amount involved in the former suit was so small as not to entitle the defendant to a writ of error on the said judgment to the Supreme Court of the United States, whereas the amount involved in this suit is sufficient to so entitle the defendant,"

and

"that the right of the defendant to have the issues involved in this case adjudicated by the Supreme Court of the United States, if a decision adverse to it is rendered by this [the circuit] court, cannot be taken away from it by reason of a former trial and judgment between the same parties, where the amount involved did not entitle the defendant to a review of the same."

The court below held the affidavit of defense to be insufficient, and, the damages sustained by the defendant having been assessed at the sum of \$6,306, judgment was rendered for that sum.

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MR. JUSTICE HARLAN, after stating the facts, delivered the opinion of the Court.

The question upon the merits which the defendant's affidavit of defense presented was whether the girder guard rails manufactured and sold by it were covered by

the Wharton patent, and by the license granted by the agreement of November 24, 1885. But that precise question, it is admitted, was presented and determined in the former suit between the same parties. And we are to inquire on this writ of error whether the court below erred in holding that the judgment in the former suit concluded that question between the parties. The learned counsel for the defendant insists that it did not, and bases his contention solely upon the ground that the former judgment was not, by reason of the limited amount involved, subject to review by this Court.

Is it true that a defeated suitor in a court of general jurisdiction is at liberty, in a subsequent suit between himself and his adversary in the same or in any other court, to relitigate a matter directly put in issue and actually determined in the first suit upon its appearing that the judgment in the first suit, by reason of the small amount in dispute, could not be reviewed by a court of appellate jurisdiction? Does the principle of *res judicata*, in its application to the judgments of courts of general jurisdiction, depend in any degree upon the inquiry whether the law subjects such judgments to reexamination by some other court? Upon principle and authority,

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these questions must be answered in the negative. We have not been referred to, nor are we aware of, any adjudged case that would justify a different conclusion.

The object in establishing judicial tribunals is that controversies between parties which may be the subject of litigation shall be finally determined. The peace and order of society demand that matters distinctly put in issue and determined by a court of competent jurisdiction, as to parties and subject matter, shall not be retried between the same parties in any subsequent suit in any court. The exceptions to this rule that are recognized in cases of judgments obtained by fraud or collusion have no application to the present suit.

In *Hopkins v. Lee*, 6 Wheat. 109, 19 U. S. 113 , it was held that a fact directly presented and determined by a court of competent jurisdiction cannot be

contested again between the same parties in the same or any other court. "In this," the Court said,

"there is and ought to be no difference between a verdict and judgment in a court of common law and a decree of a court of equity. They both stand on the same footing, and may be offered in evidence under the same limitations, and it would be difficult to assign a reason why it should be otherwise. The rule has found its way into every system of jurisprudence, not only from its obvious fitness and propriety, but because, without it, an end could never be put to litigation. It is therefore not confined, in England or in this country, to judgments of the same court, or to the decisions of courts of concurrent jurisdiction, but extends to matters litigated before competent tribunals in foreign countries. . . . On a reference to the proceedings at law and in chancery, in the case now before us, the court is satisfied that the question which arose on the trial of the action of covenant was precisely the same, if not exclusively so (although that was not necessary), as the one which had already been directly decided by the Court of Chancery."

And in [Smith v. Kernochen](#), 7 How. 178, [48 U. S. 217](#) :

"The case therefore falls within the general rule that a judgment of a court of concurrent jurisdiction directly upon the point is, as a plea, a bar, or, as evidence, conclusive between the same parties or privies upon the same matters when

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directly in question in another court."

To the same effect are [Pennington v. Gilbson](#), 16 How. 65, [57 U. S. 77](#) ; [Stockton v. Ford](#), 18 How. 418, and [Lessee of Parrish v. Ferris](#), 2 Black 606, [67 U. S. 609](#) .

The whole subject was carefully considered in *Cromwell v. County of Sac*, [94 U. S. 351](#) , [94 U. S. 352](#) , where it was said:

"There is a difference between the effect of a judgment as a bar or estoppel against the prosecution of a second action upon the same claim or demand and its

effect as an estoppel in another action between the same parties upon a different claim or cause of action. In the former case, the judgment, if rendered upon the merits, constitutes an absolute bar to a subsequent action. It is a finality as to the claim or demand in controversy, concluding parties and those in privity with them not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose. Thus, for example, a judgment rendered upon a promissory note is conclusive as to the validity of the instrument and the amount due upon it, although it be subsequently alleged that perfect defenses actually existed, of which no proof was offered, such as forgery, want of consideration, or payment. If such defenses were not presented in the action, and established by competent evidence, the subsequent allegation of their existence is of no legal consequence. The judgment is as conclusive, so far as future proceedings at law are concerned, as though the defenses never existed."

The doctrines of the latter case were applied in *Lumber Co. v. Buchtel*, [101 U. S. 638](#) , [101 U. S. 639](#) , which case is like this in some respects. That was an action for the recovery of the last installments of money due on a contract for the purchase of timber lands, the plaintiff having, in a previous action against the same defendant, obtained a judgment for the first installment. In the first action, the sole defense was that the defendant had been induced to make the contract of guaranty by false and fraudulent representations. The same defense was made in the second action, and an additional one was interposed to the effect that the representations made as to the quantity of timber, and which induced the execution of

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the contract, amounted to a warranty, upon which defendant could sue for damages. Both grounds of defense relied on in the second action were held to be concluded by the judgment in the prior action. In respect to the second ground, it was said:

"The finding of the referee, upon which the judgment [in the first action] was rendered -- and this finding, like the verdict of a jury, constitutes an essential part of the record of a case -- shows that no representations as to the quantity of timber on the land sold were made to the defendant by the plaintiff, or in his hearing, to induce the execution of the contract of guaranty. This finding, having gone into the judgment, is conclusive as to the facts found in all subsequent controversies between the parties on the contract. Every defense requiring the negation of this fact is met and overthrown by that adjudication."

In *Stout v. Lye*, [103 U. S. 66](#) , [103 U. S. 71](#) , in which one of the questions was as to the conclusiveness of a judgment in a state court upon the same parties to a suit in the federal court -- the two suits involving the same subject matter, and the suit in the state court having been first commenced -- this Court, observing that the parties instituting the suit in the federal court, being represented in the state suit, could not deprive the latter court of the jurisdiction it had acquired, said:

"The two suits related to the same subject matter, and were in fact pending at the same time in two courts of concurrent jurisdiction. The parties also were, in legal effect, the same, because in the state court the mortgagor represented all who, pending the suit, acquired any interest through him in the property about which the controversy arose. By electing to bring a separate suit, the Stouts voluntarily took the risk of getting a decision in the circuit court before the state court settled the rights of the parties by a judgment in the suit which was pending there. Failing in this, they must submit to the same judgment that has already been rendered against their representative in the state court. That was a judgment on the merits of the identical matter now in question, and it concluded the"

"parties and those in privity with them, not only as to every matter which was offered and

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received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose."

*Cromwell v. County of Sac*, [94 U. S. 351](#) , [94 U. S. 352](#) . It is true the mortgagor did not set up as a defense that the bank had no right to take the mortgage, or that he was entitled to certain credits because of payments of usurious interest, but he was at liberty to do so. Not having done so, he is now concluded as to all such defenses, and so are his privies.

In all of these cases, it will be observed, the question considered was as to the effect to be given by the court of original jurisdiction to the judgment in a previous case between the same parties or their representatives, and involving the same matters brought up in a subsequent suit. In no one of them is there a suggestion that the determination of that question by the court to which it was presented should be controlled by the inquiry whether the judgment in the first action could be reviewed upon appeal or writ of error.

The counsel for the plaintiff in error, in support of his position, referred to the clause of the Constitution declaring that the judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish, and to the clause providing that the judicial power of the United States shall extend to all cases in law or equity mentioned in that instrument. But, except in the cases specially enumerated in the Constitution, and of which this Court may take cognizance without an Enabling Act of Congress, the distribution of the judicial power of the United States among the courts of the United States is a matter entirely within the control of the legislative branch of the government. And it has never been supposed that Congress, when making this distribution, intended to change or modify the general rule, having its foundation in a wise public policy, and deeply imbedded in the jurisprudence of all civilized countries, that the final judgment of a court -- at least, one of superior jurisdiction -- competent, under the law of its creation, to deal with the parties and the subject matter, and having acquired jurisdiction of the parties,

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concludes those parties and their privies in respect to every matter put in issue by the pleadings and determined by such court. This rule, so essential to an orderly

and effective administration of justice, would lose much of its value if it were held to be inapplicable to those judgments in the circuit courts of the United States which, by reason of the limited amount involved, could not be reviewed by this Court.

The inquiry as to the conclusiveness of a judgment in a prior suit between the same parties can only be whether the court rendering such judgment -- whatever the nature of the question decided, or the value of the matter in dispute -- had jurisdiction of the parties and the subject matter, and whether the question sought to be raised in the subsequent suit was covered by the pleadings, and actually determined, in the former suit. The existence or nonexistence of a right in either party to have the judgment in the prior suit reexamined upon appeal or writ of error cannot in any case control this inquiry. Nor can the possibility that a party may legitimately or properly divide his causes of action so as to have the matter in dispute between him and his adversary adjudged in a suit that cannot, after judgment, and by reason of the limited amount involved, be carried to a higher court, affect the application of the general rule. Whatever mischiefs or injustice may result from such a condition of things must be remedied by legislation regulating the jurisdiction of the courts and prescribing the rules of evidence applicable to judgments. Looking at the reasons upon which the rule rests, its operation cannot be restricted to those cases which, after final judgment or decree, may be taken by appeal or writ of error to a court of appellate jurisdiction.

We are of opinion that the question whether the rails manufactured by the Johnson Company were covered by the Wharton patent, having been made and determined in the prior action between the same parties -- which judgment remains in full force -- could not be relitigated in this subsequent action.

There is no error in the judgment, and it is

*Affirmed.*