

United States Vs. Moser

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Court : US Supreme Court

Decided On : Nov-17-1924

Appeal No. : 266 U.S. 236

Appellant : United States

Respondent : Moser

Judgement :

United States v. Moser - 266 U.S. 236 (1924)

U.S. Supreme Court United States v. Moser, 266 U.S. 236 (1924)

United States v. Moser

No. 99

Argued October 21, 1924

Decided November 17, 1924

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APPEAL FROM THE COURT OF CLAIMS

SYLLABUS

1. While the doctrine of *res judicata* does not apply to unmixed questions of law, a fact or right distinctly adjudged cannot be disputed in a subsequent action between the same parties, even upon another demand and though the original determination was reached upon an erroneous view or application of the law. P. [266 U. S. 241](#) .

2. A determination of the status of an individual upon which his right to recover depends is as conclusive as a decision upon any other matter. P. [266 U. S. 242](#) .

3. Where a retired naval officer had obtained judgments in the Court of Claims for installments of increased pay under an Act of March 3, 1899, providing

"that any officer of the Navy . . . who served during the civil war, shall, when retired, be retired with the rank and three-fourths the sea pay of the next higher grade,"

and sued there again for another installment, *held* that the government was estopped from maintaining that his service during the civil war as a cadet in the Naval Academy was not service within the meaning of the statute, that question having been determined against it in the previous litigation. *Id.*

58 Ct. Clms. 164 affirmed.

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Appeal from a judgment of the Court of Claims upholding the claim of a naval officer for pay.

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MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

This is a suit against the United States to recover the amount of the difference between the pay of a captain and a rear admiral in the navy, based upon 11 of the Navy Personnel Act of March 3, 1899, c. 413, 30 Stat. 1004, 1007, as follows:

"That any officer of the navy, with a creditable record, who served during the civil war,

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shall, when retired, be retired with the rank and three-fourths the sea pay of the next higher grade."

Claimant, having served forty years from the date of his entrance into the Naval Academy, was retired under 1443, Rev.Stats., which reads:

"When any officer of the navy has been forty years in the service of the United States, he may be retired from active service by the President upon his own application."

The right of the officer turns upon the question whether his service at the Naval Academy constitutes "service during the civil war" within the meaning of the provision first above quoted. Three previous suits for installments of salary, the right of recovery in each depending upon this same basic question, were decided by the Court of Claims in his favor. In each, the contention of the government was the same as it is here, *viz.*, that service as a cadet during the civil war was not service within the meaning of the statute. Between the first and second of these suits, in another suit brought by a different claimant, the court construed the statute otherwise, and denied that claimant a right of recovery, *Jasper v. United States*, 43 Ct.Cls. 368, the change of opinion being made to rest upon a later act, then for the first time called to the court's attention, which, in terms, excluded the period of service as a cadet, but with a proviso that it should not apply to an officer who had received an advance of grade at or since the date of his retirement. C. 3590, 34 Stat. 553, 554.

In the second and third *Moser* cases, however, the Court of Claims declined to follow the *Jasper* case, holding that, by reason of its decision in the first *Moser* case, the question was *res judicata*. The present suit was decided in Moser's favor upon the same ground, and, in addition, the court reverted to the position taken in the first *Moser* case, abandoning, as unsound, its view as expressed

in the *Jasper* case upon the ground that the right of the officer was saved by the proviso.

We find it unnecessary to consider the latter ruling, since we are of opinion that the court was clearly right in its application of the doctrine of *res judicata*.

The general principles are well settled, and need not be discussed. The scope of their application depends upon whether the question arises in a subsequent action between the same parties upon the same claim or demand or upon a different claim or demand. In the former case, a judgment upon the merits constitutes an absolute bar to the subsequent action. In the latter case, the inquiry is whether the point or question presented for determination in the subsequent action is the same as that litigated and determined in the original action. *Cromwell v. County of Sac*, [94 U. S. 351](#) , [94 U. S. 352](#) -353. The rule is succinctly stated in *Southern Pacific R. Co. v. United States*, [168 U. S. 1](#) , [168 U. S. 48](#) :

"The general principle announced in numerous cases is that a right, question, or fact distinctly put in issue and directly determined by a court of competent jurisdiction as a ground of recovery cannot be disputed in a subsequent suit between the same parties or their privies, and, even if the second suit is for a different cause of action, the right, question, or fact once so determined must, as between the same parties or their privies, be taken as conclusively established so long as the judgment in the first suit remains unmodified."

And in *New Orleans v. Citizens' Bank*, [167 U. S. 371](#) , [167 U. S. 396](#) , this Court, speaking through Mr. Justice White, said:

"The estoppel resulting from the thing adjudged does not depend upon whether there is the same demand in both cases, but exists, even although there be different demands, when the question upon which the recovery of the second demand depends has under identical circumstances and conditions been previously concluded by a

judgment between the parties or their privies."

And see Myers v. International Co., [263 U. S. 64](#) .

The suits here are upon different demands, and the point at issue is to be determined by applying the second branch of the rule. The question expressly and definitely presented in this suit is the same as that definitely and actually litigated and adjudged in favor of the claimant in the three preceding suits, *viz.*, whether he occupied the status of an officer who had served during the Civil War.

The contention of the government seems to be that the doctrine of *res judicata* does not apply to questions of law, and, in a sense, that is true. It does not apply to unmixed questions of law. Where, for example, a court, in deciding a case, has enunciated a rule of law, the parties in a subsequent action upon a different demand are not estopped from insisting that the law is otherwise merely because the parties are the same in both cases. But 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 view or by an erroneous application of the law. That would be to affirm the principle in respect of the thing adjudged but, at the same time, deny it all efficacy by sustaining a challenge to the grounds upon which the judgment was based. See *Gunter v. Atlantic Coast Line R. Co.*, [200 U. S. 273](#) , [200 U. S. 291](#) ; *United States v. California & Ore Land Co.*, [192 U. S. 355](#) , [192 U. S. 358](#) ; *Scotland County v. Hill*, [112 U. S. 183](#) , [112 U. S. 187](#) ; *Southern Minnesota Ry. Ext. Co. v. St. Paul & S.C. R. Co.*, 55 F. 690, 695-696; *Pittsford v. Chittenden*, 58 Vt. 49; Bigelow on Estoppel, 6th ed., p. 112. A determination in respect of the status of an individual upon which his right to recover depends is as conclusive as a decision upon any other matter. *Clemens v. Clemens*, 37 N.Y. 69, 72; *Pittsford v. Chittenden*, *supra*.

Affirmed.

