1943 *Present :* **Howard C.J. and Keuneman J.**

EKNELLIGODA KUMARIHAMY, Appellant, *and* MEDANKARA THERO, Respondent.

335—D. C. Ratnapura, 6,828

*Interpleader action—Plaintiff retained till conclusion of case—Decision binding on all parties—*Res judicata*—Claim for annuity—Prescription.*

Where, in an interpleader action, all parties have been retained until the final disposal of the action under section 631 (b) of the Civil Procedure Code, the finding is binding not only on the defendants but also on the plaintiff and operates as *res judicata* in a subsequent action between a defendant and the plaintiff.

All the admitted facts which formed the basis of the interpleade action and the decision on the question as to the person entitled to receive the money are binding upon the parties.

A claim to recover an annuity due under a will is prescribed in three years.

APPEAL from a judgment of the District Judge of Ratnapura.
The facts appear from the argument.

H. V. Perera, K.C. (with him *A. R. H. Canekeratne, K.C., U. A. Jayasundere* and *P. Malalgoda*), for the defendant, appellant.—

The plaintiff and defendant in the present case were the third defendant and plaintiff respectively in the interpleader action No. 5,098. In the latter action it was held by Court that the present plaintiff was entitled to the sum brought into Court by the present defendant as stakeholder. The learned District Judge has misdirected himself on the law in holding that the decree in the interpleader action operates as *res judicata* against defendant in respect of issues that arise in the present case. In the interpleader action the defendant was not a party to any dispute but was merely a stakeholder and looker-on. She was only incidentally or collaterally interested. She was formally a party on the record but not a party in the adjudication. It cannot even be said that there was any admission by the stakeholder such as will operate as *res judicata,* actual or constructive, within the meaning of section 207 of the Civil Procedure Code. Nothing is *res judicata* except between persons who were at issue on the occasion when the thing was adjudged—*Mariammai v. Pethrupillai* [1]; *Hukm Chand on Law of Res Judicata pp. 56,170;* section 628 of the Civil Procedure Code. A test as to whether a person is a party to a case is to see whether he can appeal to the Supreme Court—*Malhi Kunwar v. Imam-ud-din.* [2]; *Roweena Umma v. Rahumma Umma* [3]. A stakeholder is not an aggrieved party and cannot appeal.

No plea of estoppel by representation can be raised on behalf of the plaintiff. Such a plea can arise only in respect of a particular thing regarding which a representation was made. The sum of money in this case is not the sum which was the subject-matter of the interpleader action.

[1] *(1918) 21 N. L. R. 200.*

[2] *I. L. R. 27 All. 59 at 61.*

[3] *(1940) 41 N. L. R. 522.*

The will in question in this case makes an absolute bequest to the defendant and does not impose a binding obligation on her to pay any money to the plaintiff. Even if it creates any such obligation the beneficiary is not the plaintiff but the priest who was officiating at the time of the execution of the will, namely, Sumanatissa.

Plaintiff cannot, at any rate, claim any sums which fell due three years before the date of action. The will does not create any charitable trust. Section 10 of the Prescription Ordinance (Cap. 55) is applicable.

N. Nadarajah, K.C. (with him *E. B. Wikremanayake* and *H. Wanigatunge*) for the plaintiff, respondent.—

The plaintiff in an interpleader action is a party and has a vital interest in the case. He seeks to be discharged from any obligation to the wrong party. The rule of *res judicata* extends to all matters in issue in a case, whether they are formally put in issue or not; the points agreed to and admitted are also caught up. The decree in case No. 5,098 is binding on the defendant in the present case, and he cannot deny liability to pay annuities to the plaintiff in accordance with the will. *See Hoystead v. Commissioner of Taxation* [1]; *Thevagnanasekeram v. Kuppammal* [2]; *Spencer Bower on Res Judicata, p. 115; Hendrick et al. v. Silva* [3]; *Sinne Lebbe Hadjiar v. Ahamadu Lebbe Natchia* [4]; *Pinhamy v. Madduma Banda* [5]; *Samichi Pieris* [6]; *Banda v. Banda* [7]. The right to appeal is not a necessary element in the doctrine of *res judicata*; a judgment entered of consent, for example, creates an effective estoppel by *res judicata*, although there is no right of appeal from it—*Menik Etana v. Punchi Appuhamy* [8]; *Sinniah v. Eliakutty* [9].

The conditions imposed in the will are sufficient to create a charitable trust. See *Vol. 4, Laws of England (Hailsham) pp. 161, 163; Lewin on Trusts (1928), p. 57.* Assuming that there was no charitable trust, section 6 of the Prescription Ordinance would be applicable and the period of prescription would be six years.

H. V. Perera, K.C., in reply.—The true scope of the interpleader action is seen in Order 57 of the *English Annual Practice*. The plaintiff is styled as applicant in English practice.

Cur. adv. vult.

October 21, 1943. KEUNEMAN J.—

This is a claim by the plaintiff for the sum of Rs. 9,525, namely, from the month of August, 1929, up to February, 1940, which it was alleged that the defendant was enjoined to pay to the plaintiff by the will of J. W. Ekneligoda, who died in 1919. Under this will (P1) of May 23, 1919, executed a few days before his death, the deceased bequeathed and devised to his wife, the present defendant, the whole of his residuary estate, movable and immovable, but "ordained" that the defendant should pay a sum of Rs. 75 per month to "the incumbent priest of Kandangoda Temple", the payment to commence from June, 1921. The defendant in obedience to the injunction in the will appears to have

[1] *L. R. (1926) A. C. 155 at 165.*
[2] *(1934) 36 N. L. R. 337 at 343.*
[3] *(1917) 4 C. W. R. 399.*
[4] *(1913) 2 Mat. C. 128.*
[5] *(1924) 2 Times of Ceylon 179.*
[6] *(1913) 16 N. L. R. 257.*
[7] *(1941) 42 N. L. R. 475.*
[8] *(1941) 21 C. L. W. 14.*
[9] *(1932) 34 N. L. R. 37.*

paid the monthly sum of Rs. 75 to Sumanatissa, who was at the time the chief *resident* priest in the Kandangoda Temple, but as dispute arose as to the person entitled to be the incumbent of Kandangoda Temple, the present defendant instituted an interpleader action, making Sumanatissa the first defendant, Sobita the second defendant, and the present plaintiff the third defendant. Action was filed on July 1, 1929, and the sum of Rs. 4,410, being the amount payable from April 1, 1924, to July 1, 1929, was brought into Court. The action was D. C. Ratnapura, No. 5,098 (P 2 and P 2A to P 2D).

In the plaint in that action, the present defendant set out the terms of the will P 1, and stated that the will was duly proved. She also referred to an agreement, No. 3,724, dated January 10, 1920, whereby she alleged that out of the sum of Rs. 75 a month, Rs. 70 a month was payable by her. She further alleged that each of the defendants claimed to be the incumbent of the said temple adversely to each other, and that her only interest was that of a stakeholder. In her prayer she claimed, *inter alia*:—

(1) that the defendants be required to interplead against each other concerning their claims,

(2) that some defendant be authorised to receive payment of the money brought into Court and future moneys becoming payable, and

(3) that upon paying the same to such defendant the plaintiff be discharged from all liability to any of the defendants.

Sumanatissa, who was the first defendant, filed no answer and took no interest in the proceedings. The second and the third defendants (the present plaintiff) filed answer and were represented at the trial, and the present defendant was also represented at the trial. The decree in the case was as follows:—

"It is ordered and decreed that the 3rd defendant" (*i.e.*, the present plaintiff) "be and he is hereby declared the rightful incumbent of Kandangoda Temple, and as such, it is directed that the money in deposit be paid to him."

It may be noted that there is no order as to the future moneys becoming payable, but it is significant that the present plaintiff was held entitled to receive the money brought into Court as *the incumbent of Kandangoda Temple*. In substance, therefore, the prayer of the present defendant was granted, and the proper person to whom payment was to be made was determined.

In the present action the plaintiff pleaded that the decree in D. C. 5,098 was *res judicata* between himself and the defendant. The District Judge upheld that plea, and the main question argued before us was whether that finding was correct.

Mr. Perera for the appellant argued that in the case of an interpleader action the plaintiff is not at issue with the defendants, and that issue only arises between the defendants. No doubt, under section 628 of the Civil Procedure Code, such action can be brought by a person "whose only interest therein is that of a mere stakeholder, and who is ready to render it to the right owner", but the action is instituted "for the purpose of obtaining a decision as to the party to whom the payment

should be made or the property delivered, and of obtaining indemnity for himself". No doubt the actual contest is restricted to the defendants, and the plaintiff impliedly agrees to accept the decision of the Court as to the proper person to whom the money should be paid or the property be delivered. But I do not agree that there is no matter in issue between the plaintiff and each of the defendants, for the plaintiff does raise a question as to the title of each of the defendants, although he admits that one of them is the person entitled. In the vast majority of such actions no further controversy is likely to arise between the plaintiff and any of the defendants, and accordingly under section 631 (*a*) the Court is given the power, at the hearing, to discharge the plaintiff, who has brought the money or the thing to Court, from all liability to the defendants, award him his costs, and dismiss him from the action. But under section 631 (*b*), where justice or convenience so require, the Court may retain all parties until the final disposal of the action. It is clear under section 631 (*c*) that the Court has to "adjudicate upon the title to the thing claimed"; and where all parties have been retained in the case, I am of opinion that the finding is binding not only on the defedants but also on the plaintiff.

To turn to the facts of this particular case, it is clear that the present defendant submitted to the court in case No. 5,098 the very question for determination which arises in this case, and that she had a strong interest in the determination of the case which would govern her own future attitude to the various defendants. She was not only a party to the case, but herself participated in the trial. In the circumstances, it would be, I think, contrary to all legal principle that she should be allowed to reagitate this matter, or that any of the unsuccessful defendants should be allowed to reagitate the matter against her. In this connection I may refer to the judgment of Lord Shaw in *Hoystead v. Commissioner of Taxation*[1]:—

> "In the opinion of their Lordships it is settled, first, that the admission of a fact fundamental to the decision arrived at cannot be withdrawn and a fresh litigation started, with a view of obtaining another judgment upon a different assumption of fact; secondly, the same principle applies not only to an erroneous admission of a fundamental fact, but to an erroneous assumption as to the legal quality of that fact . . . . If this were permitted litigation would have no end, except when legal ingenuity is exhausted . . . . Thirdly, the same principle—namely, that of setting to rest rights of litigants, applies to the case where a point, fundamental to the decision, taken or assumed by the plaintiff and traversable by the defendant, has not been traversed."

I regard this as authority in the present case for the proposition that all the facts admitted in the plaint in D. C. Ratnapura, No. 5,098, which formed the basis of the interpleader action, must be held to be binding upon the plaintiff and the defendants in that case. The question referred was as to the person entitled to receive payment, and the decision on that point also is binding upon the parties, and each of the parties is estopped from denying the correctness of that decision.

[1] *L. R. (1926) A. C. 155 (Privy Council) p. 165.*

One other question remains for determination, and that is the question of prescription. The District Judge held that the claim of the plaintiff was in the interests of a charitable trust, and that it could not be held barred by prescription—see section 111 of the Trusts Ordinance (Cap. 72). I do not agree with this finding. There is nothing in the will P 1 that imposes a charitable trust upon the incumbent of the temple, though possibly the testator may have expected such incumbent to apply the money not for himself but for the temple. There is also no evidence whatever that the defendant is a trustee of a charitable trust. Section 10 of the Prescription Ordinance (Cap. 55), will accordingly apply, and the plaintiff can only claim as regards the annuity for three years before action brought. The amount decreed will accordingly be varied, and decree entered for the plaintiff for the sum of Rs. 2,520 up to the date of the plaint, and for Rs. 70 a month thereafter up to the date of this decree, and at the same rate thereafter during the lifetime of the defendant.

The appellant is entitled to half the costs of this appeal, but the respondent is entitled to retain the order for costs in the District Court. Subject to these variations, the appeal is dismissed.

HOWARD C.J.—I agree.

Judgment varied.