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## Abatement—Pendency of Action in Circuit Court Not Bar to Subsequent Action in Justice of Peace Court

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## Comment on Recent Decisions

**ABATEMENT—PENDENCY OF ACTION IN CIRCUIT COURT NOT BAR TO SUBSEQUENT ACTION IN JUSTICE OF PEACE COURT—JUDGMENT OF JUSTICE AS RES JUDICATA.**—Plaintiff filed suit for personal injuries in the circuit court, and later filed suit and obtained judgment on the same cause of action in a justice of the peace court. A judgment of five thousand dollars was recovered in the circuit court, in which action the defendant pleaded the judgment of the justice in bar of the suit pending in the circuit court. *Held*, the judgment of the justice was binding on the parties as against second suit for same injuries in the circuit court, even though the circuit court action was commenced before judgment was entered in the justice court. *Drake v. Kansas City Public Service Co.* (Mo. App. 1931) 41 S. W. (2d) 1066.

It is of course settled law that 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. 34 C. J. 750; *Couch v. Harp* (1907) 201 Mo. 457, 100 S. W. 9. And the general rule is that the order in which the suits are brought is immaterial in the determination of this question. 34 C. J. 758, 886; *Poorman v. Mitchell* (1871) 48 Mo. 45. The fact that the judgment pleaded in bar was rendered by a justice of the peace does not make it any less effective for this purpose, a judgment on the merits rendered by an inferior court being as conclusive as the judgment of any other court. 34 C. J. 878; *Cooksey v. The Kansas City, St. Joseph & Council Bluffs Railroad Co.* (1881) 74 Mo. 477. Nor does the prior filing of the suit in the circuit court deprive the justice court of jurisdiction over the suit subsequently filed in that court in the absence of a plea in abatement on the ground of pendency of the same cause in another court. No such objection present, the justice court has power to proceed as if no suit had been filed in the circuit court. If the suit in the justice court is won and the defendant appeals, the plaintiff may dismiss his suit and he would then be in a position to sue in the circuit court subsequently to the dismissal. *Cooksey v. The Kansas City, St. Joseph & Council Bluffs Railroad Co.*, above.

In view of the judgment for the plaintiff for five thousand dollars in the circuit court, it would seem that the reversal in the principal case might work a grave injustice as to the substantive merits of the claim. However, inasmuch as the justice suit was filed by the plaintiff subsequently to the circuit court suit, the decision is justifiable on the ground that the plaintiff had exercised his option of pursuing his cause of action to judgment in either court. There is no apparent reason why the plaintiff should be allowed to obtain judgment in both courts and subject the defendant to two suits. While injustice may have been done in this particular instance, it can be referred to the plaintiff's own choice, and it seems better that the principle of *res judicata* be adhered to.

The choice of remedies made by the plaintiff operated even more harshly to the plaintiff's disadvantage in *Little v. Blue Goose Motor Coach Co.* (Ill. 1931) 178 N. E. 496. The plaintiff recovered a judgment for five thousand dollars for the death of her husband, the petition charging negligence on the part of the defendant. The defendant had previously sued the deceased in a justice of the peace court for damages to its bus and had recovered judgment. The deceased appealed from the justice's decision but the appeal was later dismissed for want of prosecution. The deceased's wife was substituted as plaintiff in the circuit court case upon the death of her husband. It was held that when the appeal was dismissed, and *procedendo* issued, the justice's judgment became a final determination between the parties and those in privity with them, and the circuit court judgment was reversed. Since there was a trial on the issue of negligence in the justice court, it seems that the apparent injustice is due entirely to the failure of the deceased to prosecute the appeal and that the principle of the case is in accord both with logic and established law. H. H. G., '33.

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CHATTEL MORTGAGES—RECORDING—RIGHTS OF INNOCENT THIRD PARTIES.—To secure the purchase price on refrigerating units installed in two apartment houses in St. Louis County, chattel mortgages were executed and filed for record in the City of St. Louis. The defendant purchased the property at a foreclosure sale under deeds of trust securing loans on the realty. The owner of these deeds of trust had purchased them sometime previous to the foreclosure without actual notice of the chattel mortgages. The plaintiff brought an action in replevin to recover possession of the refrigerators. Held, that by the installation of the units, they lost their character as personalty and became fixtures, and that as between the vendor and a third party, an encumbrancer of the realty, the filing of the chattel mortgage in the City of St. Louis was not notice, actual or constructive, of the plaintiff's rights so as to enable plaintiff to recover. *Kelvinator St. Louis, Inc. v. Schader* (Mo. App. 1931) 39 S. W. (2d) 385.

To determine whether personal property becomes a fixture three elements are usually considered by the courts: annexation, adaptation, and intent. *St. Louis Rad. Mfg. Co. v. Carroll* (1897) 72 Mo. App. 315. The latter two are most important for the courts have shown a tendency to pay more regard to the intent of the parties, as affected by the custom of the locality, and the nature of the article, rather than to consider the facility of displacement. *In re Danville Hotel Co.* (C. C. A. 8, 1930) 38 F. (2d) 10. See (1919) 18 MICH. L. REV. 405. The mode of annexation, however, is important in determining the rights of one who intends to purchase or encumberance the realty to which the article is attached, with regard to the aspect of notice of prior rights of other persons in that fixture. In the principal case, because the articles appeared by their physical attachment to be a part of the realty, they were so construed.

The authorities are in unison to the effect that such a chattel mortgage is binding on the original parties and on all subsequent purchasers or en-