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Book Review

BOOK REVIEW

THE RESTATEMENT OF JUDGMENTS

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While the *Restatement of Judgements* provides a useful addition to American legal bibliography, lawyers using it for the first time may experience some disappointment in discovering that many problems normally classified under the broad heading of "Judgments" are outside the scope of this volume. Thus most matters dealing with pleading and practice in proceedings leading to judgments, with remedies for "appeals," "reversals" or "modifications" of judgments, with the enforcement of judgments, and with priority or divestiture of judgment liens find no treatment in this volume. This Restatement is concerned with judgments only as regards their validity and effect upon subsequent controversies, and it might, therefore, have been more properly entitled a Restatment of the law of *res adjudicata.* Futhermore, rules of *res adjudicata* are considered only in realtion to judgments rendered by "courts" in "civil" actions. Accordingly, the work deals with the effect of "civil" judgments of a justice of the peace and of "Courts of Record"; but the effect of "civil" judgments upon subsequent criminal proceedings, of criminal judgments upon subsequent "civil" proceedings, and of "administrative" decisions is outside the scope of the Restatement. Apart from the failure to distinguish more specifically between such classifications as "administrative" and "judicial" decisions and to indicate the nebulous boundary between "courts" and "administrative tribunals," no criticism is necessarily intended of this restriction upon the scope of the Restatement. The ground covered is important enough, and there are understandable and practical, if debatable, reasons for this limitation of scope.

Division lines have not always been drawn with full clarity. Section 73, 74 and 75 deal with the effect, under rules of *res adjudicata,* of "Judgments with respect to property, or in rem"", "judgments as to status," and "judgments with respect to interests in property, or quasi in rem," respectively. Since such judgments vary in effect from one another and from "personal judgments" it becomes imperative for users of the Restatement to distinguish each from the other. There is, of course, some attempt to make differentiation. But the perennial controversies which have raged from time immemorial over the boundaries of these terms suggest the unlikelihood that the difficulties can be adequately met by a few over generalized paragraphs (in the Introductory Note just before Section One) which served better to pose the problem than to dispose of it.

Can all judgments readily be fitted into these classifications? Is a judgment capable of only one classification? Are these terms expressive of recognizable and distinct operative *facts,* or are they shorthand labels for describing particular *results?* May not a particular judgment be delt with as being *"in rem"* for one purpose, and *"quasi in rem"* or *"in personam"* for another? May not a judgment be *"in rem"* as to some of the parties and *"quasi in rem"* as to others? Is an adjudication of bankruptcy a judgment *"in rem", "quasi in rem"* or one as to *"status,"* and is the answer the same for all purposes? Is a determination of an issue of *divisavit vel non* a judgment *"in rem"* or *"quasi in rem"?* May it be regarded for some purposes as *"in personam"* as between parties to the issue? What is the nature of a decree changing the name of a corporation or of a person? Is a decree of confirmation of an executor's account, fixing the estate's assets, the compensation of the executor, the balance owing by him, and directing him to distribute to specified legatees, a decree *"in rem", "quasi in rem"* or *"in personam"* for all purposes? In an election contest, how should a decision upholding the claim of one party and determining the right to emoluments, past and future, be classified? These are some of the questions that will face at least the annotators of the Restatement, who must decide under which section to put specific cases. While the treatment to be accorded these classifications has been and is a matter of debate, there are many, perhaps, who will wish that the Restatement had given specific treatment to individualized situations (will cases, trustees accounts, bankruptcy cases, etc.) instead of announcing general rules for "judgments in rem," "quasi in rem," "status," etc. In any event more specific and detailed discussion of these classifications might have proved useful.

Pennsylvania lawyers may also experience some difficulty in using the chapter dealing with equitable relief against judgments. While the Restatment recognizes that many jurisdictions like Pennsylvania employ common law forms for equitable relief, much of what is said about the proceedings by which relief is given and the nature of the relief (see e. g., section 113) will not have too familiar a ring for Pennsylvanians who almost invariably employ the expedient of a rule to open judgment in attacking prior adjudications. Moreover, since in this state the rule to open judgment is often used indiscriminately both as an appellate device and as a proceeding for equitable relief (whereas the Restatement is not concerned with remedies for "appeal") it is often difficult to determine whether in a given case, the use of the rule to open judgment is in accordance with Restatement rules or not.

Section 33, dealing inter alia with the requirements for jurisdiction for divorce, cites by cross reference the rules drafted earlier in the Restatement of Conflicts sec-

tion 113, which in effect followed the ruling of *Haddock v. Haddock,*[1] as amplified in *Davis v. Davis.*[2] Since the Restatement went to press, however, Haddock v. Haddock has been overruled by *Williams v. North Carolina.*[3] To that extent, therefore, the Restatement of Judgments is unavoidably misleading.

Even with the aforesaid qualifications, the Restatement of Judgments may well be regarded as the most outstanding contribution to date on the law of *res adjudicata,* and it ranks favorably with most of the preceeding volumes published by the American Law Institute. No work should be deemed the ultimate in any field, and the Institute would be the last to suggest that consideration on any subject should end with the Restatement. The Institute does aim to provide a worthwhile starting pointing from which to launch scholarly, yet practical inquiry into legal problems. That aim has again been achieved with the Restatement of Judgments.

D. J. FARAGE

Carlisle, Pa.
December, 1943

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[1]201 U. S. 562; 26 S. Ct. 525 (1906)
[2]305 U. S. 32; 59 S. Ct. 3 (1938)
[3]317 U. S. 387; 63 S. Ct. 207 (1942)