

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY  
v. PERRY COUNTY.

Opinion delivered April 18, 1927.

JUDGMENT—RES JUDICATA.—The former decision of the Supreme Court denying recovery of taxes illegally assessed on the ground that the payment was voluntary held *res judicata* on a subsequent application for a refund of such taxes, under Crawford & Moses' Dig., § 10180, notwithstanding certain other taxpayers had recovered a refund, under such section, of taxes paid under said assessment.

Appeal from Perry Circuit Court; *Marvin Harris*, Judge; affirmed.

*Thos. S. Buzbee*, *Geo. B. Pugh* and *H. T. Harrison*, for appellant.

*Boyd Cypert*, for appellee.

McHANEY, J. Appellant has stated the case correctly, and we adopt its statement as follows:

“In April, 1923, appellant herein brought a suit in the Perry Circuit Court against Oscar Brazil, as sheriff and ex-officio collector, to recover \$3,957.21, which the complaint alleged had been paid to the collector by the plaintiff on an erroneous assessment of taxes made against the property of the plaintiff for the year 1922, which sum it was alleged the collector had in his possession for the use of the plaintiff. The case was tried in the Perry Circuit Court on an agreed statement of facts, and a judgment was rendered dismissing the plaintiff's complaint. An appeal was duly prosecuted to the Supreme Court, which affirmed the judgment of the Perry Circuit Court, on the ground that the payment of the taxes illegally assessed was voluntary. This case is reported in 166 Ark. 246-251, 266 S. W. 66, under the style of the *Chicago, R. I. & Pacific Ry. Co. v. Brazil*.

“In the meantime, eighty-four other taxpayers of Perry County filed a petition in the Perry County Court, under the provisions of § 10180, C. & M. Digest, for a refund of the taxes paid by them under said erroneous assessment, which claim for a refund was allowed by

this court in the case of *Paschal v. Munsey*, 168 Ark. 58-64, 268 S. W. 849.

“On the 24th day of March, 1925, and subsequent to the decision of this court in the case of *Chicago, R. I. & P. Ry. Co. v. Brazil*, *supra*, appellant filed its petition in the Perry County Court, setting up the erroneous assessment of taxes made against its property for the year 1922 and the payment of same, and asking for a refund of same under the provisions of § 10180 of C. & M. Digest. The county, in response to this claim, pleaded the judgment of the court in the case of *Chicago, R. I. & P. Ry. Co. v. Brazil*, *supra*, as *res judicata*. The Perry County Court denied appellant’s petition. An appeal was duly perfected to the Perry Circuit Court and a judgment was rendered in that court denying said petition, from which judgment this appeal is prosecuted.”

The judgments of the county and circuit courts are right. The same point now before the court was decided adversely to appellant’s contention in the case of *Chicago, R. I. & P. Ry. Co. v. Brazil*, 166 Ark. 246, 266 S. W. 66. Appellee set up this case in a proper plea as *res judicata*, and the circuit court properly so held. No useful purpose could be served in reviewing the facts in the former case, as we hold that the former decision was right, and it is decisive of this case.

The judgment is affirmed.

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