

CPLR 4504: Amendment

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the defendant in a subsequent suit. However, in *Israel v. Wood Dolson Co.*,⁸⁷ the Court of Appeals held that where the doctrine of collateral estoppel is asserted defensively, "the test to be applied is that of 'identity of issues.'" ⁸⁸ In such a case the mutuality requirement is abandoned.

While *Israel* only required that the issues in the subsequent action be identical, the Court in *Cummings* not only noted an identity of issues, but also an identity of parties. It seems, therefore, that the Court was reluctant to apply the "identity of issues" test as the sole criterion for the defensive assertion of collateral estoppel in negligence cases. There is a fundamental policy consideration behind this reluctance by the Court, which can be illustrated by a situation wherein there is more than one possible plaintiff. In such an instance, there is always the possibility of a collusive suit, wherein a favorable judgment obtained by the defendant could be used to collaterally estop subsequent plaintiffs.

While *Cummings* does not overrule *Israel*,⁸⁹ it evidences an apparent reluctance on the part of the Court of Appeals to apply the "identity of issues" test as the sole criterion for the defensive assertion of collateral estoppel. It appears that future cases will be decided on their own merits, within the guidelines set up by *Israel* and *Cummings*. The test may very well now be "identity of issues plus . . ."

ARTICLE 45 — EVIDENCE

CPLR 4504: Amendment.

The section, as amended, declares that a person authorized "to practice medicine, registered professional nursing, licensed practical nursing or dentistry" cannot disclose confidential information acquired from a patient while acting within his professional capacity.

CPLR 4533-a: Amendment.

As a result of this new rule, an itemized repair bill—which is receipted and marked paid—for property damage to a motor vehicle in an amount of *less than three hundred dollars* is now *prima facie evidence* of the reasonable value of the repairs itemized in an action or counterclaim for such damages.

The repair bill must be verified by a proper party. It must state (1) that no refund has or will be made to the claimant,

⁸⁷ 1 N.Y.2d 116, 134 N.E.2d 97, 151 N.Y.S.2d 1 (1956).

⁸⁸ *Id.* at 120, 134 N.E.2d at 100, 151 N.Y.S.2d at 5. See *The Quarterly Survey of New York Practice*, 41 ST. JOHN'S L. REV. 121, 148 (1966).

⁸⁹ It is to be noted that Chief Judge Desmond, who wrote the majority opinion in *Cummings*, concurred in the majority opinion in *Israel*.