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Miscellaneous—State Not Liable for Negligence of Doctor Examining Prize Fighter

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The case at bar appears to be an exercise of this discretion. Whether the discretion was exercised properly is open to conjecture. It can be argued that since arbitration is voluntary and the parties have elected the forum in which they wish to resolve their disputes, primarily because of the reputed promptness and finality of arbitration, the expected benefit must be weighed against the possible detriment flowing from arbitration. Unless facts are shown to have existed before or at the time of the making of the award which would move a court of law or equity to deny enforcement of the award, (*e.g.* fraud, illegality, overreaching, or a device to impose otherwise prohibited penalties and forfeitures)[13] such enforcement should be granted.

On the other hand, it can be effectively argued that such an award is a violation of public policy and the court should have exercised its power in vacating the award. Such an award contravenes deeply ingrained principles and rules of equity jurisprudence regarding the specific performance of contracts for personal service. "It would be intolerable if a man could be compelled by a court of equity to serve another against his will, or if a man could be compelled to retain in his employ one he does not want; courts of equity exercise no such power and grant no such relief."[14] In the case at bar, damages would have been a proper remedy.

Apparently the Court felt that even though the granting of specific performance of a personal employment contract could be considered a violation of public policy, nevertheless, the argument in favor of upholding arbitration awards outweighed those presented for vacating such an award.

STATE NOT LIABLE FOR NEGLIGENCE OF DOCTOR EXAMINING PRIZE FIGHTER

The question of whether the State of New York is liable for the negligence of a doctor who examines price fighters prior to a fight was recently presented to the Court of Appeals in the case of *Rosensweig v. State*.[15] The boxer in question went into a coma and died after being knocked out in an authorized boxing match in New York City. His administrator alleged that the doctor who had examined him was negligent. The basis of his claim was that there was a failure to determine that brain damage caused prior to the fatal fight had rendered the deceased physically unfit to fight. Claiming that the examining physician was an agent of the State, the plaintiff attempted to impute negligence to it.

The Trial Court judgment for the administrator, was the result of finding the doctor an agent of the State and finding him negligent.[16] The Appellate Division reversed, holding the proof insufficient as a matter of law to find the doctor negligent.[17] Without reaching the question of negligence, the Court of

13. Boyer v. Western Union Tel. Co., 124 Fed. 246 (C.C. Mo. 1903).
14. In re Publishers Ass'n., 280 App. Div. 500, 114 N.Y.S.2d 401 (1st Dep't 1952).
15. 5 N.Y.2d 404, 185 N.Y.S.2d 521 (1959).
16. 208 Misc. 1065, 146 N.Y.2d 589 (Ct. Cl. 1955).
17. 5 A.D.2d 293, 171 N.Y.S.2d 912 (3d Dep't 1958).

Appeals decided, 4 to 3, that the doctor was not an employee or agent of the state, and therefore his negligence, if any, could not be imputed to the State.

In 1911 boxing was re-introduced in New York State after several decades of complete prohibition. Legislation placed stringent regulations on the sport and subjected it to the supervision of a newly created State Athletic Commission.[18] The legislation had two main purposes: (1) a desire to prevent brutal and degrading features which had previously permeated the contests, and (2) to promote and protect such contests when conducted within the legitimate limits of a sport.[19]

In 1920, the Walker Boxing Law invoked rigid supervision of matches through a licensing procedure.[20] The Walker law has remained basically intact, but in 1951, when the bout which gave rise to this litigation took place, specific language in the statute prescribed physical examinations for all boxers by a Commission designated physician before each match.[21] The corporation promoting the fight paid the doctor for his services, but the amount of the fee was determined by the Commission.[22]

The majority in this case looked upon the restriction as a customary exercise of police power, prompted by the public purpose of reducing the risk of permanent injury to fighters. Nothing in the Walker Boxing Law or the rules of the State Athletic Commission suggests that examining doctors, who are paid by the fight promoter, are servants of the State, or, in performing their duties, are subject to control or supervision by the Commission. The State establishes the panel of physicians, but the promoter does the actual employing from that panel. Theoretically, the promoter has a choice of doctors from the panel, while in practice it has worked out that the examinations in New York City bouts are invariably made by the same doctors.

The dissent felt that the State maintained such a close and exclusive direction and control over the physical examinations of the boxers, and the physicians who did the examining, as to render the State liable for the negligence of the doctor. They relied on the "direction and control" criterion as requiring a determination of liability.[23]

Perhaps it was this ostensible choice of panel doctors which remained with the promoter, plus the fact that the promoter paid the physician's fee, that prompted the court to decide that the doctor was not an agent or employee of the State. In view of the strong direction and control argument of the dissent, however, it appears likely that a broad policy reason was behind the decision. A desire to protect the State's power to regulate, without incurring liability,

18. N.Y. SESS. LAWS 1911, c. 779.
19. Fitzsimmons v. N.Y. State Athletic Commission, 15 Misc. 831, 146 N.Y. Supp. 117 (Sup. Ct. 1914), *aff'd* 162 App. Div. 904, 147 N.Y. Supp. 1111 (1st Dep't 1914).
20. N.Y. SESS. LAWS 1920, c. 912.
21. N.Y. SESS. LAWS 1948, c. 754, § 5.
22. *Id.* § 2.
23. Baldwin v. Abraham, 57 App. Div. 67, 67 N.Y. Supp. 1079 (2d Dep't 1901), *aff'd* 171 N.Y. 677, 64 N.E. 1118 (1902).

could have motivated the court to keep the state free from liability on the master-servant principles on the facts presented in this case.

APPLICATION OF ESTOPPEL TO FOREIGN COURT JUDGMENT

The defendant, in *International Firearms Co., Ltd. v. Kingston Trust Company*,[24] sold a draft drawn on the Federal Reserve Bank of New York, naming the plaintiff's predecessor in interest as payee. As per contract requirements, the buyer forwarded the draft to an escrow agent in Canada, where a subsequent contract dispute was resolved by the Canadian courts in favor of the plaintiff who was awarded the draft, which decision was here resisted. The Appellate Division affirmed a judgment for the defendant,[25] concluding that while it may be true that once a bank draft, bought and paid for, has issued, the transaction is complete and may not be rescinded,[26] the defendant was capable of defending suit on the draft by questioning the validity of the plaintiff's title, which was found defective. The Court of Appeals reversed.

By permitting the defendant to contest the validity of the plaintiff's possession, the lower courts were allowing a re-examination of the identical issue settled by the Canadian judgment, and were not giving effect, as required under principles of comity, to that judgment.[27] Although the defendant was not a party to the foreign action, the judgment rendered there precludes him from asserting that title was not in the plaintiff, since the decree was not introduced here as binding upon the rights of the defendant, but merely as a link in the plaintiff's title.[28]

In *Railroad Equipment Co. v. Blair*,[29] the plaintiff, in a previous suit, had been awarded possession of freight cars in a replevin action against the defendant therein, but the second defendant had resisted surrendering possession claiming that plaintiff had never acquired the right of possession against the former defendant. The Court held that while a former judgment is never allowed to defeat any right existing in a person not a party, or his privy, it is admissible against such person for purposes of proving that the plaintiff has been clothed with whatever right the defendant therein had.

Under these decisions the defendant may still resist claims of ownership by proving a defective title in the plaintiff, but is precluded from re-examining the validity of a judicially forged link in the chain of title where a determination of his rights and interests were not involved. Under the instant decision this is equally true when the judgment is of a foreign court as it is of a domestic judgment.

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24. 6 N.Y.2d 406, 189 N.Y.S.2d 911 (1959).
25. 6 A.D.2d 171, 175 N.Y.S.2d 794 (1958).
26. Kerr S. S. Co. v. Chartered Bank of India, Australia and China, 292 N.Y. 253, 54 N.E.2d 813 (1944).
27. Cowans v. Ticonderoga Pulp & Paper Co., 219 App. Div. 120, 219 N.Y. Supp. 284 (1927), *aff'd*, 246 N.Y. 603, 159 N.E. 669 (1927).
28. Barr v. Gratz' Heirs, 17 U.S. 213 (1819).
29. 145 N.Y. 607, 39 N.E. 962 (1895).