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Civil Procedure And Evidence—Evidence—State Retirement System

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Evidence—State Retirement System

In *Owens v. McGovern*,⁵⁰ a proceeding seeking an award of death benefits under the State Employees' Retirement System,⁵¹ the issue was raised as to whether the State Comptroller, since he is not bound by the findings of the Workmen's Compensation Board,⁵² may reject medical testimony of causation in holding that death as a result of a heart attack is not an accidental death.

Originally it was held in effect, that the findings of the Workmen's Compensation Board were binding on the Comptroller in proceedings seeking accidental death benefits under the retirement system.⁵³ Shortly after the footnoted decisions, the Legislature amended the Civil Service Law to provide that workmen's compensation decisions were not binding on the Comptroller in such proceedings.⁵⁴

The Court, in reversing the holding of the Appellate Division,⁵⁵ held that, while the Comptroller may make his own independent factual determination, nothing in Civil Service Law, section 85, gives him the power to reject competent proof of causation nor to change the law as to the meaning of the word "accident". Had there been no showing of exertion, possibly it could have been said that the heart injury was not due to overwork, even without admitting medical testimony.⁵⁶ In the instant case, however, there was evidence of extreme physical exertion prior to the heart attack. A heart attack when caused by over-exertion in the course of employment is an accidental injury.⁵⁷ There is no difference between such accidental injuries and those which are "the natural and proximate result of an accident" under section 81 of the Civil Service Law.⁵⁸

This is not to say, as Judge Fuld points out in his concurring opinion, that the Comptroller is bound to find an accidental death in this particular case. After

50. 309 N.Y. 449, 131 N.E. 2d 729 (1956).

51. CIVIL SERVICE LAW, §81(a), "An accidental death benefit shall be payable upon the death of a member if, upon application, the comptroller shall determine, on the basis of the evidence, that such member: (1) Died before the effective date of his retirement, as the natural and proximate result of an accident sustained in the performance of duty in the service upon which his membership was based, and"

52. CIVIL SERVICE LAW, §85 (b), "A final determination of the state workmen's compensation board . . . shall not . . . be, or constitute, a determination that an accident disability retirement allowance or an accidental death benefit is payable on account thereof pursuant to the provisions of this article."

53. *Slattery v. Board of Estimate and Apportionment*, 271 N.Y. 346, 3 N.E. 2d 505 (1936); *Nash v. Brooks*, 276 N.Y. 75, 11 N.E. 2d 545 (1937).

54. CIVIL SERVICE LAW, §67; repealed by L. 1947, c.841, eff. July 1, 1948; subject matter now covered by §85; see note 52, *supra*.

55. 283 App. Div. 898, 129 N.Y.S. 2d 118 (3rd Dep't 1954).

56. See *Odell v. McGovern*, 283 App. Div. 585, 129 N.Y.S. 2d 115 (3rd Dep't 1954), *aff'd* 308 N.Y. 678, 124 N.E. 2d 319 (1954).

57. *Masse v. James H. Robinson Co.*, 301 N.Y. 34, 92 N.E. 2d 56 (1950).

58. *Slattery v. Board of Estimate and Apportionment*, *supra* note 53,

admitting the medical testimony he may still find that there is insufficient proof of accidental death.⁵⁹ However, the amendment to the Civil Service Law does not give him the power to reject expert testimony as to the cause of death.

Injunction—Foreign Divorce Actions

In *Rosenbaum v. Rosenbaum*,⁶⁰ a wife brought an action for an injunction to restrain her husband from prosecuting a divorce action in Mexico. The Court held (4-3) that the wife had an adequate remedy at law under the Civil Practice Act by a declaratory judgment⁶¹ and therefore was not entitled to injunctive relief.

The Supreme Court of the United States has declared that decrees of divorce, rendered by sister states are entitled to a presumption of validity⁶² under the "Full faith and credit" clause of the Federal Constitution.⁶³ At one time, such decrees had no such presumption of validity,⁶⁴ and it was usually held that a court of equity would not intervene to restrain a proceeding entirely void.⁶⁵ Since the decrees of a sister state now have a presumption of validity, equity will grant an injunction to prevent hardships.⁶⁶

The propriety of an injunction is not clear however, when the divorce decree of a foreign country is involved. There is no presumption of validity accorded foreign country divorce decrees. The problem is thus not the effect of the full faith and credit clause of the Federal Constitution, but solely a question of comity.⁶⁷ There is a tendency in this country to refuse recognition to Mexican divorce decrees.⁶⁸

The majority in the instant case applied the familiar equity doctrine of not intervening to restrain a proceeding entirely void, holding that since a decree of divorce rendered by a court of a foreign country is null and void on its face, an injunction is not the proper remedy and a plaintiff will be left to an appropriate remedy at law. The minority contended, however, that since an injunction could issue to prevent a defendant from procuring a divorce in a sister state, the same

59. See *McCadden v. Moore*, 276 App. Div. 490, 95 N.Y.S. 2d 740 (4th Dep't 1950), *aff'd* 301 N.Y. 760, 95 N.E. 2d 819 (1950).

60. 309 N.Y. 371, 130 N.E. 2d 902 (1955).

61. N. Y. CIV. PRAC. ACT §§473, 1169-a.

62. *Williams v. North Carolina* 317 U.S. 287 (1942).

63. U. S. CONST. art. IV, §1, cl. 1.

64. *Haddock v. Haddock*, 76 App. Div. 620, 79 N.Y. Supp. 133 (1st Dep't 1902); *aff'd* 178 N.Y. 557, 70 N.E. 1099; *aff'd* 201 U.S. 562 (1906).

65. *Goldstein v. Goldstein*, 283 N.Y. 147, 27 N.E. 2d 969 (1940).

66. *Hammer v. Hammer*, 303 N.Y. 481, 104 N.E. 2d 864 (1952).

67. *Martens v. Martens*, 284 N.Y. 363, 31 N.E. 2d 489 (1940).

68. *May v. May*, 251 App. Div. 63, 295 N.Y.S. 599 (4th Dep't 1937); SCHOULER DIVORCE MANUAL Pp. 531-532 (1944).