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Contracts—Per Curiam

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that they were false. The Court of Appeals reversed the Appellate Division,[50] and held (5-2) that the complaint stated a cause of action in recission.

The two dissenting justices felt that the defendant's obligation was contractual in nature, and did "not sound in fraud." The majority, on the other hand, relied on precedents[51] and pointed out that it had been alleged that a promise of performance was made with knowledge on the part of the promisor that he would not act.

Defendant also relied on a statement in the assignment agreement that verbal understandings not therein specified would not bind either party. In dismissing this the Court pointed out that if effect were given to such clauses, an action for recission based on fraud would never lie if the defendant simply had the foresight to absolve himself by including such a clause in his contracts.[52]

Thus, in the instant case the Court reaffirmed their recognition of the principle that the state of a man's mind is a fact capable of misrepresentation.[53]

Per Curiam

Specific Performance — Inadequacy of Money Damages—In *Monclova v. Arnett*,[54] the Court of Appeals preserved an action for specific performance where the relief by way of quantum meruit recovery would be grossly inadequate. The cause of action was also preserved even though the ability of plaintiff to actually receive the benefit of his contract was subject to administrative determination.[55]

Carrier Liability—For Full Value of Goods Lost—In *Emily Shops v. Interstate Truck Line*,[56] a shipper was allowed to recover the full value of his goods where he paid more than the usual freight charges corresponding in filed tariffs to full value of goods, and where he did not mention the true value of the goods. The Court compared a similar decision[57] in which recovery was allowed although plaintiff did not pay any freight charges, and had not declared the true value of his goods.

Premature Suit—In *Lenmar Construction Co. v. New York Housing Authority*,[58]

50. 286 App. Div. 238, 142 N.Y.S.2d 223 (1st Dep't 1955).
51. Adams v. Gillig, *supra* note 48; Ritzwaller v. Lurie, 225 N.Y. 467, 122 N.E. 634 (1919).
52. Ernst Iron Works v. Duralith Corp., 270 N.Y. 165, 200 N.E. 683 (1936).
53. Edington v. Fitzmaurice, 29 Ch. D. 359 (1882).
54. 3 N.Y.2d 33, 163 N.Y.S.2d 652 (1957).
55. N.Y. ALCOHOLIC BEVERAGE CONTROL LAW §§109, 114.
56. 2 N.Y.2d 405, 161 N.Y.S.2d 46 (1957).
57. Loeb v. Friedman's Express, 187 Misc. 89, 94, 65 N.Y.S.2d 450, 454 (Sup. Ct. 1946), *aff'd* 296 N.Y. 1029, 73 N.E.2d 906 (1947).
58. 2 N.Y.2d 628, 162 N.Y.S.2d 25 (1957).

plaintiff failed to comply with the provisions of his contract incident to certificate of final acceptance before bringing suit for any unpaid balance; hence, dismissal of his cause of action for the unpaid balance was affirmed by the Court of Appeals.

CORPORATIONS

Director Action—Remedy Of Aggrieved Party

Section 25 of the General Corporation Law[1] provides for judicial review of a corporate directors election. In the past, there has been some confusion in the application of this section as to the scope of the discretionary power which it gives to the trial judge. Obviously, if the election was carried on in an illegal manner it will be set aside.[2] However, the difficulty arises in the group of cases where, although there is no specific legal defect in the election, an air of unfairness envelops the transaction to such an extent that the court feels that "justice" requires a new election.[3]

In re William Faehndrich, Inc.,[4] sheds little light on this cloudy area. There, the aged founder of the corporation failed to attend a stockholders meeting although he had been notified that its purpose was the election of directors. The trial court set aside the election[5] on the grounds that under the circumstances the notice had failed to "carry home" to the complaintant that the purpose of the meeting was to remove him as a director and subsequently as an officer of the corporation. The Appellate Division affirmed without opinion,[6] and the Court of Appeals reversed holding that the notice had been sufficient under section 45 of the General Corporation Law[7] and stating that there was no duty to disclose the course of conduct to be followed by the new directors after their election.

The case also involved a dispute as to the ownership of certain shares of

1. N.Y. GEN. CORP. LAW §25 provides:
   Upon the application of any member aggrieved by an election, . . . the Supreme Court at a special term thereof shall forthwith hear the proofs and allegations of the parties, and confirm the election or order a new election, as justice may require.
2. See, *eg.*, In re Green Bus Lines, Inc., 166 Misc. 800, 2 N.Y.S.2d 556 (Sup. Ct. 1937).
3. See, Application of Kaminsky, 251 App. Div. 132, 295 N.Y. Supp. 989 (4th Dep't 1937); *aff'd without opinion* 277 N.Y. 525, 13 N.E.2d 456 (1938).
4. 2 N.Y.2d 468, 161 N.Y.S.2d 99 (1957).
5. 3 Misc.2d 156, 151 N.Y.S.2d 261 (Sup. Ct. 1956).
6. 1 A.D.2d 992, 152 N.Y.S.2d 413 (1st Dep't 1956).
7. N.Y. STOCK CORP. LAW §45 provides:
   Notice of meetings of stockholders. . . . Such notice shall state the purpose or purposes for which the meeting is called . . .