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recent case, *Nealis v. Industrial Bank of Commerce,* 200 Misc. 406, 107 N. Y. S. 2d 264 (Sup. Ct. 1951), an attorney recovered $100 damages in libel and nominal damages in negligence for the wrongful refusal to honor a valid check. If the plaintiff elects to sue in contract, evidence of injury to his credit is admissible at the trial. *Levine v. State Bank,* 80 Misc. 524, 141 N. Y. Supp. 596 (Sup. Ct. 1913).

A bank may be liable beyond the limits of a contract where it fails to lend money, *Goldsmith v. Holland Trust Co.,* 5 App. Div. 104, 38 N. Y. Supp. 1032 (1st Dep't 1896), or fails to renew notes, *Bank of Commerce v. Bright,* 77 Fed. 949 (3d Cir. 1896). But, the specific hazard must have been in contemplation at the time the contract was made. McCormick, Damages § 139 (1935).

In the instant case the minority is shocked that a bank can cause foreseeable gross harm to a depositor, and escape liability. It argues that credit standing is a protected interest, and that an attempt at proof of foreseeable injury caused by the negligent payment should not be denied the plaintiff. But even under the rationale of the New York wrongful-refusal-to-pay cases more than nominal damages beyond the amounts of the checks would be denied. Also, it would appear that in accord with *Levine v. State Bank, supra,* proof of injury to credit standing would still be admissible at the trial of the contract action.

To the writer the holding of the majority is sound. Although consequential tort damages are commonplace in other areas, the door should not be opened to impose additional liability on banks for the results of their errors. Since the banks must assume the losses on forged checks, tort damages would place their standard of responsibility completely out of proportion to that in other commercial and professional areas.

David Abbott

CHILDREN'S COURT ACT—MEDICAL TREATMENT OF CHILD AGAINST PARENT'S WISHES

Proceeding by Commissioner of Social Welfare to obtain custody of twelve year old boy whose father, because of personal philosophy, refused to allow an operation on son's hairlip and cleft palate. *Held* (3-2): Children's Court should have ordered medical and surgical care. *In re Seiferth,* 285 App. Div. 221, 137 N. Y. S. 2d 35 (4th Dep't 1955).

"It is the public policy of the state of New York to provide medical services for the rehabilitation of physically handicapped children." N. Y. PUBLIC HEALTH LAW § 2580. A physically handicapped child is one who, by reason of a physical defect, is incapacitated for education or for remunerative occupation. N. Y. CHILDREN'S COURT ACT § 2(7). The Children's Court Act of New York confers on Children's Court jurisdiction of physically handicapped and neglected children. A neglected child is one whose parents refuse to provide necessary medical or surgical care. N. Y. CHILDREN'S COURT ACT § 2(4).

Assuming that all constitutional questions were settled, there might still be one consideration which would preclude an order for the operation, *viz.*, that the child is twelve years old, and has adopted the same ideas about this operation as his father.

The lower court ordered only that the child be acquainted with the benefits of the operation, and be permitted to decide for himself. *In re Seiferth,* 127 N. Y. S. 2d 63 (Children's Ct. 1954).

None of the cases previous to this have had to deal with such a problem. The adverse psychological impact on this child may outweigh the physical benefits. It has been said, in awarding custody to someone else upon father's refusal to supply medical aid, that "when a court is asked to appoint a guardian . . ., it will investigate the circumstances and act according to sound discretion, the primary object being the good of the child." *Heineman's Appeal,* 96 Pa. St. 112 (1880). Section 24 of the New York *Children's Court Act* provides that "the court *in its discretion* . . . may cause any person within its jurisdiction to be examined" and "whenever a child within the jurisdiction of the court and under the provisions of this act appears to the court to be in need of medical or surgical care . . ., a suitable order *may* be made for the treatment . . . of such child . . .." [Emphasis added.] Cases have held that, where the treatment sought would be of dubious benefit or would involve substantial risk to the child, the courts would not intervene against the parents' wishes, even where the child himself desired the operation. *In re Hudson,* 13 Wash. 2d 673, 126 P. 2d 765 (1942). In view of the discretion allowed the judge of the Children's Court and the policy of the state to serve the child's best interests, as evidenced by statute and cases, the instant decision would seem to contravene both. Here there was no expert medical testimony as to the psychological effect on the child, but it was the contention of the father and the belief of the judge that provision should be made for his mental welfare.

To order medical treatment the court need not find it "necessary" to the life of the child. It need only be that "the health,

the limb, the person, or the future of the child is at stake." *In re Rotkowitz,* 25 N. Y. S. 2d 624, (N. Y. Dom. Rel. Ct. 1941). And it has long been settled that medical treatment can be ordered over the objections of the parents. *In re Vasko,* 238 App. Div. 128, 263 N. Y. S. 552 (2d Dep't 1933).

As *parens patriae,* the state can do what it thinks is for the best interests of the child. *Finlay v. Finlay,* 240 N. Y. 429, 148 N. E. 624 (1925).

This was all admitted for purposes of the above argument. The appellate court never reached the problem set out, except to say that it disagreed with the lower court.

The constitutional objection to state interference with religious convictions is dismissed by the appellate court by calling these convictions "arbitrary" objections to the operation. As a general rule, religious convictions must fall before the needs of public health under the police power. *People v. Labrenz,* 411 Ill. 618, 104 N. E. 2d 769 (1952); *Jacobson v. Massachusetts,* 197 U. S. 11, (1905); *Buck v. Bell,* 274 U. S. 200 (1927). But unlike the vaccination and sterilization cases, where the benefits to public health were apparent, cases like the instant one are not of such obvious benefit, and the United States Supreme Court has never passed on the constitutionality of such orders. State courts justify them by the claim of *parens patriae,* and by the fact that "a democratic society rests for its continuance upon the healthy, well-rounded growth of young people into full maturity as citizens, with all that it implies." *Prince v. Massachusetts,* 321 U. S. 158, 168 (1944). Here the court, in holding constitutional the state law prohibiting and making unlawful the furnishing to a minor any article to sell in violation of state law, said "We neither lay the foundation 'for any (that is, every) state intervention in the indoctrination and participation of children in religion' which may be done 'in the name of their health and welfare' nor give warrant for 'every limitation on their religious training and activities'." 321 U. S. at 171.

The jurisdiction of the state at *parens patriae* and as wielder of the police power has probably never extended so far as in the *Seiferth* case. Although the wisdom of such an extension is doubtful, the New York Court of Appeals will probably affirm in light of other state court decisions.

Dawn Girard