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Notes and Comments

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"The Decision . . . Will Be Final!"

The dulcet tones of the radio announcer have oft proclaimed, "The decision of the judges will be final!" Emphasis so laid on finality may evoke a random thought in the mind of the average listener but to the legal mind, inured to the mutability of judicial pronouncements, those words possess a hollow ring. And, judging by the recent case of *Groves* v. *Carolene Products Company*,[1] they have engendered a controversy unique in the annals of Illinois jurisprudence.

The defendant company there concerned, apparently in an effort to stimulate lagging sales, had advertised a prize contest. Various rewards were offered for lists of words constructed from the letters contained in the phrase "Milnot Whips." The rules of the contest provided that, without questioning the veracity of the phrase, contestants were to create words anagrammatically therefrom. Such rules further declared that "Whoever builds the most words wins a U. S. Defense Bond worth $1,000 at maturity. Prizes will be awarded for the most complete list of words . . . But, remember, if one contestant has the longest list of correct words, she will be declared the winner . . . Decision of the judges to be final."[2] It is from that fateful last sentence that the tempest arose.

The plaintiff in that action, like Milnot, whipped into activity and promptly produced and dispatched a truly formidable list of words. It appeared from the pleadings that this list did, in fact, dwarf all others submitted. The contest judges, despite such magnificent effort, awarded the first prize to another contestant though they did graciously scrape a $2.00 crumb into the plaintiff's lap. His wrath aroused, plaintiff promptly brushed that crumb aside and, with the fury of the just, he riposted immediately by filing the instant suit. The defendant company recovered quickly from this attack, and lunged forward with a motion to strike the complaint. Six times did plaintiff file new complaints. Six times, defendant moved to strike, each time on the ground that plaintiff had agreed that the "decision of the judges" was to be final. As regularly as clockwork, the lower court six times agreed with the defendant and swept away the several complaints. Ultimately, as it must come to all men, weariness descended on plaintiff and he appealed from the last strike. The Appellate Court, implying that the decision of the contest judges was but dross at the feet of Justice, reversed and remanded with directions to deny the motion to strike.

It is a remarkable fact that assiduous investigation reveals no case directly in point, and there are but few cases which bear at all

[1] 324 Ill. App. 102, 57 N. E. (2d) 507 (1944).
[2] 324 Ill. App. 102 at 103, 57 N. E. (2d) 507 at 508.

on the question.[3] Yet the irresistible force of logic compels agreement with the holding of the Appellate Court. Certain conclusions are so basic in the law of contracts that to give citation thereto would merely insult the reader. The advertisement announcing this contest was an offer to enter into a unilateral contract, which offer was accepted by submitting a list of words. Any ambiguity in that offer must be construed against him who had prepared the same, for the court must construe the meaning of the contract from the whole document. Now, was the offer equivocal?

There could be no answer to this question but, "Yes, indeed!" Look at the rules of this contest so carefully expounded by the defendant company! Observe how insistently they declared that the submitter of the longest list was to be entitled to the first prize! Not once was this stated, not twice, but again and again and again! Very well, one is overwhelmed; the longest list must be awarded the first prize. Now to whom do these rules apply? To the common man of course; to the postprandial peruser of the periodicals. But do they also apply to the honorable judges of the contest? Could it be that defendant intended that these judges were to extemporize, to invent their own rules, as they proceeded? None could countenance such a contention; no man of reason would so intend. It was the poet who declared:

> "Who to himself is law, no law doth need,
> Offends no law and is a king indeed."

But in the history of this nation, one doctrine has stood triumphant—this is a government of laws, not one of men! All must obey the laws, even that esoteric class of persons called contest judges. Observe, in that regard, what the judiciary, that noble body of men who interpret the laws, have said: "The duty of the [contest] board was purely ministerial, and it could no more permit the terms of the contest to be ignored than could the defendant himself."[4] With this, all must agree. Contest judges, like more ordinary mortals, must be bound by the rules.

Well, then, under these rules, what were these lofty citizens to do? They were to decide; a most elementary thing! Yet, again, what is meant by that apparently innocuous word "decide"? Enlightenment may be found in defendant's own authority which states that a "decision" is a "determination or result arrived at after consideration, as of a question."[5] Then it must follow, as the night the day, that these judges did not "decide," for they had nothing to decide. One could not dignify a result by the term "decision" unless there is first,

[3] See annotations in 67 A. L. R. 413 and 33 L. R. A. (N. S.) 305.

[4] Smead v. Stearns, 173 Iowa 174 at 186, 155 N. W. 307 at 311, Ann. Cas. 1918C 745 at 750 (1915).

[5] Webster's New International Dictionary.

in fact, a question or something that requires consideration and discretion to determine. But here that was not so; the judges were simply to count the words and verify them against the dictionary. Their duty was purely "ministerial," they must obey the rule that ". . . the candidate who . . . is shown to have earned the largest vote [in the instant case, to have submitted the longest list] in accordance with the rules, is entitled to . . . receive the promised award."[6]

Was this done? No, it was not! The infamy of the act of the contest judges called out for vengeance! They did not heed the biblical injunction to "Render therefore unto Caesar the things which are Caesar's."[7] They ignored the words of the eminent justice who had so gallantly insisted that they could not "rightfully take away from her [plaintiff] that which she had earned under the terms of the contract, even though the defendant had contemplated by another provision of the contract to make the decision of the [judges] absolute and final."[8] Flaunting all such guidance and with reprehensible temerity, they awarded the first prize to a lesser entry!

In law and in justice such thing could not be countenanced. Be proud that a reviewing court could rise up in righteous wrath and strike down so miserable a wrong. Well did that august body know that ". . . the actual finding that plaintiff had given the correct number in his answer,"[9] or, as in this case, had submitted the longest list of words, entitled him to the special first prize. And so it spoke in gravest tones and said, "Reversed and remanded with directions." Thus nobly did it charge that the reward must go to plaintiff, for

> "'Twas he that ranged the words at random flung,
> Pierced the fair pearls and together them strung."[10]

Not even a contest judge may dam the tide of logic and arithmetic. Justice has again prevailed!

A. BAUM

CIVIL PRACTICE ACT CASES

JUDGMENT—MERGER AND BAR OF CAUSES OF ACTION AND DEFENSES—WHETHER OR NOT MORE THAN ONE JUDGMENT MAY BE GRANTED IN FAVOR OF PLAINTIFF IN THE SAME ACTION AGAINST THE SAME PARTY DEFENDANT—**Section 50(1) of the Illinois Civil Practice Act[1] has**

[6] See note 4, ante.

[7] Matt. 22, v. 21.

[8] Long v. Chronicle Pub. Co., 68 Cal. App. 171 at 180, 228 P. 873 at 876 (1924).

[9] Minton v. F. G. Smith Piano Co., 36 App. D. C. 137 at 148, 33 L. R. A. (N. S.) 305 at 310 (1911).

[10] *Bidpai* (*Pilpay*), Anvar-i Suhaili, trans. by author.

[1] Ill. Rev. Stat. 1943, Ch. 110, § 174. That statute provides, in part, that: ". . . Judgment may be rendered in favor of or against such parties respectively at any stage of the proceedings . . . Judgment may be entered in such form as

received additional interpretation through the recent case of *Zimmerman* v. *Bankers Life & Casualty Company.*[2] The facts therein show that plaintiff based his claim upon a contract under which he was to receive certain commissions. Defendant filed an answer thereto purporting to state a defense to the entire claim. Later, plaintiff moved for a judgment for part of the sum claimed as having been "admitted in the defendant's affidavit of merits." That motion was sustained and a final judgment for such part was entered against the defendant. Satisfaction of that judgment was acknowledged. Still later, the case came on for trial as to the balance of the claim and plaintiff was awarded another judgment for the amount thereof over defendant's objection that the matter had already been fully adjudicated. Defendant's appeal, based on the ground that there can be only one judgment and one satisfaction in the same cause of action, proved unsuccessful when the Appellate Court for the First District, affirming judgment for the plaintiff, held that Rule 75 of the Municipal Court of Chicago[3] and Section 50(1) of the Illinois Civil Practice Act permit more than one judgment in the same cause. It said, in passing, that the court "may dispose of a segment of the litigation and render judgment thereon, reserving the remaining issues for trial at a later time. At the later trial a distinct judgment may be rendered."[4]

The common law rule, still followed except where modified by statute, was that but one final judgment could be entered in any action for the reason that, upon rendition thereof, the court's jurisdiction over the cause ceased except for the purpose of assisting in the collection of that judgment.[5] Such judgment was also held to be a bar

may be required by the nature of the case and by the recovery or relief awarded, and more than one judgment may be rendered in the same cause." The section was adopted from New Jersey, Pub. Laws 1912, Ch. 231, §§ 20-1, with the addition of the clause that "more than one judgment may be rendered in the same cause." It applies in all civil actions, carries over the practice previously existing in chancery cases, and is an incident to the broad provisions as to joinder.

[2] 324 Ill. App. 370, 58 N. E. (2d) 267 (1944).

[3] Manual of the Municipal Court of Chicago, 1940, p. 50. The provisions of that rule, at least in this regard, are identical with those of Section 50 of the Civil Practice Act.

[4] 324 Ill. App. 370 at 374, 58 N. E. (2d) 267 at 269.

[5] See Freeman, Judgments, 5th Ed., Vol. I, § 101, and cases there cited. In Brewer v. Christian, 9 Ill. App. 57 at 59 (1881), the court said: ". . . the plaintiff having already taken a final judgment against defendants for that part of the amount claimed by him, not answered by the declaration, with an award of execution therefor, he is not now entitled to a second judgment for the same sum. The practice in such cases, as we understand it, is for the plaintiff to have an interlocutory judgment entered for the part of the declaration unanswered, but no final judgment should be entered until the trial of the issues, when the whole amount of the recovery can be included in one verdict and one judgment be rendered for the whole. But we are unable to perceive how the plaintiff can be allowed to sever his action either as to person or amount and have several judgments rendered against several persons, or against the same persons for several sums at different stages of the proceeding." Accord: Vanduzen v. Pomeroy, 24 Ill. 289 (1860); Freeland v. Board of Supervisors, 24 Ill. 303 (1862); Wight v. Meredith, 5 Ill. (4 Scam.) 360 (1843).

to further proceedings on that claim on principles of public policy. As one writer states, "the peace and order of society, the structure of our judicial system, and the principles of government require that a matter once litigated should not again be drawn in question between the same parties or their privies."[6] A final judgment pronounced by a court of competent jurisdiction upon the merits, in the absence of fraud or collusion is, therefore, conclusive of rights, questions, and facts in issue, as to the parties and their privies, in all other actions in the same or any other judicial tribunal of concurrent jurisdiction.[7] This doctrine, which has formed a part of the legal systems of all civilized nations, contemplates that no question shall become res adjudicata until it is settled by a final judgment,[8] hence interlocutory judgments or decrees may at any time be modified or vacated by the court which rendered them for they are not conclusive adjudications.[9] But once a final judgment is rendered, it is said to be conclusive as to all matters urged or which might have been urged at the hearing. A judgment which has been entered as the result of a compromise between the parties may likewise possess the force of res adjudicata.[10] In the absence of statute, therefore, the defendant's contention in the instant case would not have been absurd.

Section 50(1) of the Illinois Civil Practice Act was obviously designed to relax the common law rule which allowed but one final judgment in an action, for it permits plural judgments although it specifically directs that there shall be but one satisfaction. Several illustrations of the change thus accomplished have already been provided although none of them reach specifically the point in the instant case. In *National Builders Bank of Chicago* v. *Simons,*[11] for example, the trial court had vacated a judgment by confession instead of ordering the same to be opened up and to stand as security for the indebtedness pending further hearing. Thereafter, the trial court entered a summary judgment and, upon realizing within thirty days that it had been a mistake to vacate the original judgment, it attempted to rectify the error by setting aside the vacation order and reinstating the judgment by confession. Such action was held proper, under the present practice, even though it meant that the record showed there were two judgments on the same claim. In another case, that of *Shaw*

[6] Freeman, Judgments, 5th Ed., Vol. II, § 626, p. 1318.

[7] Ibid., Vol. II, § 624. See also People v. Amos, 246 Ill. 299, 92 N. E. 857, 138 Am. St. Rep. 239 (1910).

[8] Schmidt v. Glade, 126 Ill. 485, 18 N. E. 762 (1888).

[9] People ex rel. O'Connell v. Noonan, 276 Ill. 430, 114 N. E. 928 (1916); Quinn v. McMahan, 40 Ill. App. 593 (1891). See also Knox & Lewis v. Alwood, 228 F. 753 (1915).

[10] Freasman v. Smith, 379 Ill. 79, 39 N. E. (2d) 367 (1942); Wadhams v. Gay, 73 Ill. 415 (1874). In Riggs v. Barrett, 308 Ill. App. 549, 32 N. E. (2d) 382 (1941), the court held that a decree entered by consent of the parties was binding upon them and could not be reversed.

[11] 307 Ill. App. 552, 31 N. E. (2d) 269 (1940).

v. *Courtney*,[12] an action against several defendants for an assault, the jury apportioned the damages among the joint tort feasors and it was held that the court did not abuse its discretion in entering several judgments on the several verdicts. The case of *Kulesza* v. *Alliance Printers & Publishers, Inc.*,[13] also upheld several judgments in the same case based on separate findings against the several defendants. The instant case, however, is the first one, since the adoption of the Civil Practice Act, which sanctions several judgments in the same case against the same person.

The result in the instant case not only seems proper but is comparable to that obtained in the earlier case of *Mester Coal Company* v. *Pope*,[14] which arose under Section 55 of the Practice Act of 1907, as amended.[15] Plaintiff there filed an affidavit of its claim to which defendant, pursuant to the then existing statute, filed an affidavit of merits stating that the defendant had a good defense to the suit, upon the merits, to the whole of plaintiff's demand, "except as to the sum of $106.06, which is admitted by the defendant to be due to the plaintiff." Judgment for the plaintiff for the sum admittedly due was held proper even though the jury allowed nothing on the disputed balance. That result was said to be justified under the statute as it then existed, the court saying: "That amendment authorizes . . . the rendition of a judgment for the part admitted to be due and owing. That is the amendment authorizes two judgments in one action where but one was before permissible."[16]

Such result would seem to be the only sensible solution, for there does not appear to be any valid reason, in this state, why a person who has a sum of money admittedly due him should not be able to secure prompt enforcement of that claim, even though other parts of the same claim may be in dispute and may need determination at a subsequent time. Granted that two suits would be improper,[17] still two judgments in the same suit should accomplish the desired result. The practitioner who contemplates taking a judgment for the admitted portion of a claim would do well, however, to observe the cautionary admonition of the court in the instant case. To avoid any implication that such judgment is final as to all issues involved, the judgment order should continue the cause for trial as to any balance in dispute, thereby clearly indicating an intention to reserve jurisdiction over all unsettled matters.

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[12] 317 Ill. App. 422, 46 N. E. (2d) 170 (1943), noted in 21 CHICAGO-KENT LAW REVIEW 249, affirmed in 385 Ill. 559, 53 N. E. (2d) 432 (1944).
[13] 318 Ill. App. 231, 47 N. E. (2d) 547 (1943).
[14] 155 Ill. App. 667 (1910).
[15] Cahill Ill. Rev. Stat. 1931, Ch. 110, § 55. The present provision in Ill. Rev. Stat. 1943, Ch. 110, § 181, is similar in purpose and stems from the earlier statute.
[16] 155 Ill. App. 667 at 671.
[17] City of Bloomington v. Burke, 12 Ill. App. 314 (1883).