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Article 24

Collateral Estoppel: Defense Allowed Despite Claim That Issue Was Not Decided by the Jury

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At any rate, the *Kippen* case clearly illustrates the extent to which the first department has dismissed causes for general delay under the old version of 3216, and makes one curious as to how they will react to the new amendment's strict limitations upon their discretion.

Collateral Estoppel: Defense allowed despite claim that issue was not decided by the jury.

In *Bronxville Palmer, Limited v. State*,[97] the Court of Appeals held that the plaintiff's action in the Court of Claims was barred by a previous judgment against the plaintiff in the supreme court. In the supreme court, the plaintiff had unsuccessfully sought recovery for trespass against two contractors engaged by the state. While it was not disputed that the exoneration of the servant would inure to the benefit of the master, the plaintiff urged that the issue of the contractors' trespass was not properly presented to the jury. Plaintiff contended that the jury was erroneously charged that if it found that the state was to blame for *directing* the trespass, the verdict could be for the contractors. The majority of the Court of Appeals found that this argument of erroneous charge was not substantiated by the trial record and, therefore, allowed the state's defense.[98]

The dissent felt that the result of the earlier adjudication was the finding that the state had directed the contractors to go onto plaintiff's land.[99] Thus, the issue of whether a trespass had been committed by the contractors had been excluded from the jury's determination. Therefore, the dissent concluded that collateral estoppel should not bar the suit.

It must be noted that the majority and the dissent differed only on the question of whether, *in fact*, the jury had decided some issue other than the physical trespass of the contractors. Both agreed that if that issue had not actually been decided, the supreme court judgment would not have barred the Court of Claims action. It is well settled that a prior judgment is final only as to issues that are actually decided.[100]

Although this case does not alter any existing principles of the law of judgments, it has a practical significance which must be noted by the litigator. Where the issues actually decided by the jury are unclear, whether because of an improper charge or

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[97] 18 N.Y.2d 560, 223 N.E.2d 887, 277 N.Y.S.2d 402 (1966).
[98] *Id.* at 564, 223 N.E.2d at 890, 277 N.Y.S.2d at 406-07.
[99] *Id.* at 567, 223 N.E.2d at 891-92, 277 N.Y.S.2d at 409.
[100] New York State Labor Relations Bd. v. Holland Laundry, 294 N.Y. 480, 63 N.E.2d 68 (1945); Gelb v. Mazzeo, 5 App. Div. 2d 10, 169 N.Y.S.2d 58 (3d Dep't 1957).

otherwise, the determination must be appealed and the case clarified lest a subsequent suit be precluded by the defense of collateral estoppel.

ARTICLE 52 — ENFORCEMENT OF MONEY JUDGMENTS

CPLR 5231 and Personal Property Law Section 49-b: Simultaneous deductions under support order and income execution allowed.

Defendant-employer in *Costa v. Chevrolet-Tonawanda, Division of General Motors Corp.*,[101] was directed by an order pursuant to Personal Property Law Section 49-b to deduct a certain sum from an employee's salary to be allocated for the support of the employee's wife. Thereafter, defendant was served with an income execution against the employee's salary. The City Court of Buffalo, seeming to rely heavily on the facts of the case, ruled that the priority provision of section 49-b did not preclude a simultaneous income execution deduction under CPLR 5231, so long as the support money for the wife remained untouched.[102] The court pointed out that section 49-b was for an obligation, both legal and moral, arising out of the marital relationship.[103] Since the defendant would be liable for the support obligation anyway, and since the legislature limited income execution to ten percent of the debtor's income to keep the remainder available for support of the family, concurrent imposition of both the income execution and the support order was found by the court to be consistent.[104]

However, in *Matter of Beahm*,[105] a section 49-b order for support was made subsequent to an outstanding CPLR 5231 income execution. The Family Court, Richmond County, held that the support order suspended the CPLR 5231 income execution until reinstated by another court.[106]

The *Costa* and *Beahm* decisions, though apparently at odds, are capable of resolution. In *Beahm*, the family court was merely deferring final determination as to the simultaneous deductions to the court from whence the income execution issued.

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[101] 53 Misc. 2d 252, 278 N.Y.S.2d 275 (Buffalo City Ct. 1963), *aff'd mem.*, 24 App. Div. 2d 732, 263 N.Y.S.2d 319 (4th Dep't 1965).
[102] *Ibid.*
[103] *Id.* at 253, 278 N.Y.S.2d at 276-77.
[104] *Id.* at 253-54, 278 N.Y.S.2d at 276-77.
[105] 47 Misc. 2d 900, 263 N.Y.S.2d 533 (Family Ct. Richmond County 1965). *See* 7B MCKINNEY'S CPLR 5231, supp. commentary 63 (1966).
[106] *Ibid.*