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Arbitration--Res Judicata as to All Matters Reasonably Comprehended in Dispute (In re Spring Cotton Mills, 275 App. Div. 196 (1st Dep't 1949))

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buyer procured by his broker, thereafter all acts and all negotiations between the accepted prospect and landowner constitute an endless chain up to the culmination.[6] It is immaterial whether the owner sold at the same price,[7] or at a lower figure than the one given to the broker, provided that the buyer would have been ready, willing, and able to pay the original price, for the broker would still remain the efficient cause of bringing the parties together.[8] The question of "efficient cause" is one of fact.[9] Like other questions of fact, it must, where the facts are in dispute or where more than one inference may reasonably be drawn, be a question for the jury to determine.[10] However, where the facts clearly show that the broker did in fact find the customer and cause the customer and his principal to come together on the sale, the broker is entitled to a peremptory instruction that he has procured the purchaser and earned his compensation.

In the instant case, the plaintiff had informed the purchaser of the fact that the property was for sale; he had led the purchaser to the seller; the purchaser was ready, willing and able to pay the original price desired by the defendant seller; in fact a sale was consummated between the purchaser and the defendant. From these facts the court was manifestly correct in holding that, as a matter of law, the broker was the efficient cause of bringing the parties together. Injustice would have resulted if the seller could have circumvented payment of the commission to the broker by suggesting that the sale be at the asking price minus that sum to which the broker would have been entitled.

V. R.

ARBITRATION—RES JUDICATA AS TO ALL MATTERS REASONABLY COMPREHENDED IN DISPUTE.—In this action the vendor protested the vendee's attempt to arbitrate on the ground that the vendee's breach of warranty claim was precluded by a previous judgment. The previous judgment relied upon was the result of an original arbitration proceeding in which the vendor was awarded the full contract price for twill goods delivered in accordance with contract. The instant attempt at arbitration by the vendee was on the theory of breach of warranty arising from alleged defects in the material—the same grounds upon which payment had been refused at the outset. *Held,* motion to stay arbitration granted. Judgment entered

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[6] McMonigal v. North Kansas City Development Co., 233 Mo. App. 1040, 129 S. W. 2d 75 (1939).
[7] Jacobs v. McKelvey, 130 Pa. Super. 417, 197 Atl. 494 (1938).
[8] Hubachek v. Hazzard, *supra* note 1.
[9] Wilson v. Sewell, 50 N. M. 121, 171 P. 2d 647 (1946).
[10] MECHAM, AGENCY 2435 (2d ed. 1914).

upon the original arbitration award was res judicata of all matters reasonably comprehended in the dispute submitted to the arbitrators. This was the decision despite the non-appearance of the vendee in the original proceedings. In re *Spring Cotton Mills,* 275 App. Div. 196, 88 N. Y. S. 2d 295 (1st Dep't 1949).

The reasoning of the decision is based on two premises: (1) the need for an end to litigation as epitomized in the companion doctrines of res judicata and collateral estoppel [1] and (2) the character of the arbitration proceeding.

The effect of a judgment as an instrument of collateral estoppel has been crystallized into two well-settled rules. Where the two suits are for the same cause of action, the judgment estops both as to defenses and grounds of recovery actually presented and as to those which might have been presented. Where the second action between the same parties is for a different claim, the initial judgment estops only as to those matters in issue or points controverted.[2] These rules apply to default judgments [3] which are final adjudications except where statutes provide otherwise.[4]

It is clear that had the former suit been an action at law for the contract price, the scope of the court's inquiry would not have included a finding on the breach of warranty claim; therefore a judgment thereon would not bar a subsequent action for breach of warranty by the vendee.[5] However, where the character of the first proceeding of necessity included an inquiry into the facts needed to sustain the second action, the tendency of the court has been to bar the second action—undoubtedly on the premise that both parties have had their day in court.[6]

The arbitration method has an individual status as a procedurally unrestricted forum,[7] the awards of which are not the subject of review except on the grounds specifically stated in the Civil Practice

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[1] Webster, *Res Judicata,* 107 N. Y. L. J. 1448 (April 7, 1942); RESTATEMENT, JUDGMENTS §§ 61-72 (1942); Scott, *Collateral Estoppel by Judgment,* 56 HARV. L. REV. 1 (1942).

[2] Last Chance Mining Co. v. Tyler Mining Co., 157 U. S. 683 (1895); Cromwell v. County of Sac, 94 U. S. 351 (1877); Schuylkill Fuel Corp. v. B. & C. Nieberg Realty Corp., 250 N. Y. 304, 165 N. E. 456 (1929); RESTATEMENT, JUDGMENTS § 68 (1942).

[3] Last Chance Mining Co. v. Tyler Mining Co., *supra* note 2. See Note, 128 A. L. R. 472, 474, 478 (1940).

[4] N. Y. CIV. PRAC. ACT § 108. "The court, in its discretion, . . . at any time within one year after notice thereof, may relieve a party from a judgment, order or other proceeding, taken against him through his mistake, inadvertence, surprise or excusable neglect."

[5] Honsinger v. Union Carriage & Gear Co., 175 N. Y. 229, 67 N. E. 436 (1903). See Note, 128 A. L. R. 472, 503.

[6] Hellstern v. Hellstern, 279 N. Y. 327, 18 N. E. 2d 296 (1938); Everett v. Everett, 180 N. Y. 452, 73 N. E. 231 (1905); Williams v. Barkley, 165 N. Y. 48, 58 N. E. 765 (1900); Blair v. Bartlett, 75 N. Y. 150 (1878).

[7] Smyth v. Board of Education, 128 Misc. 49, 217 N. Y. Supp. 231 (Sup. Ct. 1925).

Act.[8] Their scope of inquiry is as broad as any dispute arising out of or in connection with the contract (except where restricted in the submission),[9] and their basis is an irrevocable contract[10] which cannot be altered by the act of one party in refusing to arbitrate.[11] Thus the arbitrators have a wide scope of inquiry without regard to the formalities of counterclaims and their independence as actions. In the instant case the court rises above the controversy surrounding the application of the doctrine of res judicata since the *Schuylkill* decision,[12] and solves the problem confronting it by simple syllogistic reasoning. Arbitration presupposes dispute, premises the court. The dispute submitted was whether the vendee had a valid objection to paying the otherwise absolute debt which arose on delivery of the goods contracted for. Therefore, in awarding the full amount to the vendor, the merits of the defense were absolutely determined. The other party's non-appearance in the prior proceeding had no bearing on the decision, for jurisdiction and consent to the proceeding had been given beforehand in the original contract.[13]

The inviolability of contracts is the strength of the arbitration method. By applying normal contract rules to the arbitration clause, the courts have succeeded in reducing their already overburdened calendars. They are loath to vitiate this advantage by allowing further litigation on a valid award. This decision is in line with that manifest trend.

I. F. B.

BAILMENT—LIABILITY OF PARKING LOT OPERATOR.—Plaintiff parked his automobile on defendant's parking lot and paid a fee to an employee, who after requesting plaintiff to leave the ignition key in the lock, inquired when the automobile would be claimed. Plaintiff was uncertain when he would return. The attendant suggested that he would put the ignition key beneath the floormat of the car in the event that the plaintiff returned after eleven P.M. at which time the lot closed. To this the plaintiff agreed. About two hours

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[8] N. Y. CIV. PRAC. ACT §§ 1462, 1462-a.

[9] Lipman v. Haeuser Shellac Co., 289 N. Y. 76, 43 N. E. 2d 817 (1942); Fidler v. Cooper, 19 Wend. 285 (N. Y. 1838); Wheeler v. Van Houton, 12 Johns. 311 (N. Y. 1815); Matter of Pierce v. Brown Buick Co., 258 App. Div. 679, 17 N. Y. S. 2d 889 (2d Dep't 1940), *aff'd*, 283 N. Y. 669, 28 N. E. 2d 400 (1940); Samuel Kaplan & Sons v. Fascinator Blouse Co., — Misc. —, 70 N. Y. S. 2d 8 (Sup. Ct. 1947).

[10] N. Y. CIV. PRAC. ACT § 1448.

[11] Matter of Zimmerman v. Cohen, 236 N. Y. 15, 139 N. E. 764 (1923) (of course either party can bring action in the courts in the first instance and thus supersede the right to arbitrate).

[12] Schuylkill Fuel Corp. v. B. & C. Nieberg Realty Corp., *supra* note 2.

[13] N. Y. CIV. PRAC. ACT § 1450.