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Contracts--Agreement to Commit a Tort Unenforceable--Public Policy (Reiner v. North American Newspaper Alliance, 259 N.Y. 250 (1932))

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the political parties as organs of the state, or by the legislature itself as in *Nixon* v. *Herndon*.[10] Where a state attempts to do by indirection what it may not do directly, the validity of the act may be questioned.[11]

R. L. L.

CONTRACTS—AGREEMENT TO COMMIT A TORT UNENFORCEABLE —PUBLIC POLICY.—Plaintiff contracted for passage on the *Graf Zeppelin* from Germany to New York. He knew that the exclusive news rights of the flight had been acquired by a third party. As a condition of being given passage he had agreed that he would give no interviews and send no reports of said passage. Plaintiff thereafter contracted to supply defendant with news through a pretense of answering messages from his friends. As a defense to this action defendant set up the fact that the contract was made in violation of the terms of the contract of passage. *Held,* the contract was in effect a contract to commit a tort. The court will not aid one who has committed a tort to recover from another the price agreed to be paid for his wrongful act. *Reiner* v. *North American Newspaper Alliance,* 259 N. Y. 250, 181 N. E. 561 (1932).

The law is ever anxious to safeguard and to protect the interests of parties in existing contractual relations from intentional and wrongful interference by strangers. An action will lie for intentionally inducing a breach of contract without excuse or justification.[1] Such conduct is considered a tort since it is a fraud upon the parties and the public and is against public policy.[2] The contract for the exclusive news of the trip made between the owners of the *Graf Zeppelin* and third parties was interfered with by the contract between plaintiff and defendant. Such contract was in effect a contract to commit a tort. The courts will not aid one who has committed a tort to recover from another the price agreed to be paid for the tortious act.[3] The courts are called upon to make a choice between two evils—either to enforce the contract in favor of the tort feasor and allow him to recover for his unlawful act,

[10] *Supra* note 1.

[11] *Supra* note 6. See also Note (1930) 15 CORN. L. Q. 262; Note (1930) — HARV. L. REV. 467; Note (1930) 39 YALE L. J. 423, for comments on Nixon v. Condon as decided by the federal courts before reaching the Supreme Court.

[1] Lamb v. Cheney & Son, 227 N. Y. 418, 125 N. E. 817 (1920); Campbell v. Gates, 236 N. Y. 457, 141 N. E. 914 (1923); Hornstein v. Podwitz, 254 N. Y. 443, 173 N. E. 674 (1930).

[2] Materne v. Horwitz, 101 N. Y. 469, 5 N. E. 331 (1886).

[3] 3 WILLISTON, CONTRACTS (1924) §1753.

or to allow the defendant to receive the benefits of the contract without compensating for them. It chooses the lesser evil and calls the contract void. The defense is allowed not as a protection to the defendant but as a disability to the plaintiff for his unconscionable conduct.[4]

H. B. S.

DEFAULT JUDGMENT—WHAT CONSTITUTES—APPEAL FROM.—Judgment was recovered by plaintiff after an inquest at Trial Term, before which proceeding defendant had asked for an adjournment which was refused. After reversal by the Appellate Division of an order granted in Special Term vacating the inquest and granting a new trial, defendant appealed to the Court of Appeals. *Held,* no appeal lies from a final judgment to review an intermediate order refusing to vacate an inquest. *Jensen* v. *Union Railway Company of New York City,* 260 N. Y. 1, 182 N. E. 226 (1932).

Judgment by default may be entered upon defendant's failure to appear, after issue has been joined, when the case is called for trial.[1] However, is it a judgment by default when defendant appears on the day set for trial and requests an adjournment? The rule in New York is fairly well settled that defendant is in default [2] and that his remedy is to make a motion to vacate the judgment.[3] However, if at the time of trial, defendant has his request put on record, the judgment is not by default.[4] Though a mere technicality, the result is far-reaching. The right of appeal is not inherent and did not exist at common law, but it is purely a matter of statute.[5] Accordingly, no appeal will lie from a default judgment since the right is denied by statute.[6] If the defendant has his objection put on record, since the

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[4] Holman v. Johnson, 1 Cowp. 341, 343 (1775).

[1] Pierce, etc. Mfg. Co. v. Kleinfeld, 53 Misc. 260, 103 N. Y. Supp. 86 (1907); Emmanuele v. Fruit Auction Co., 93 Misc. 493, 157 N. Y. Supp. 282 (1916).

[2] Silverman v. Mark, 148 N. Y. Supp. 259 (1914). See Flake v. Van Wagenen, 54 N. Y. 25 (1873) for reasons denying appeal from default judgment.

[3] White v. Sebring, 228 App. Div. 413, 240 N. Y. Supp. 477 (3rd Dept. 1930).

[4] Citizens' Trust Co. of Utica v. R. Prescott & Son, 221 App. Div. 426, 223 N. Y. Supp. 191 (4th Dept. 1927).

[5] Croveno v. Atlantic Ave. R. R. Co., 150 N. Y. 225, 228, 44 N. E. 968, 969 (1896).

[6] N. Y. C. P. A. §557, subd. 1: "A party aggrieved may appeal in a case provided by law. He may not appeal from a judgment or order rendered or made upon his default unless an appeal therefrom be expressly authorized by law."