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Vacation of Judgements - Extrinsic and Intrinsic Fraud

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in behalf of the two bills I have mentioned, if the various state organizations and groups will inform themselves with respect thereto, and lend their active and vigorous assistance. The people and not the politicians will save this country from totalitarianism if it can be saved.

I therefore urge that every lawyer write our Senators and Congressmen asking them to support this worthy legislation and that you interest others to do the same.

H. G. NILLES,
President.

NATIONAL CONFERENCE OF JUDICIAL COUNCILS

Washington, D. C.—Impetus to the work of the National Conference of Judicial Councils was given at a luncheon here, held in connection with the meeting of the American Law Institute, at which members of the conference heard reports on what American lawyers are doing during the emergency and how their English brethren are carrying on under war conditions.

Sir Wilfred A. Greene, Master of the Rolls of England, and Dr. Arthur L. Goodhart, professor of Jurisprudence at Oxford University, gave off-the-record talks on conditions there. Other speakers were Jacob M. Lashly, president of the American Bar Association; Solicitor General Francis Biddle; and Judge Edward R. Finch, chairman of the conference. Arthur T. Vanderbilt, chairman of the conference Executive Committee, presided.

In attendance at the luncheon were Attorney General Jackson; justices of the United States Supreme Court; senior judges of the federal circuit court of appeals from several districts; judges of the United States Court of Appeals of the District of Columbia; chief justices of state supreme courts; law school deans, and others.

VACATION OF JUDGMENTS — EXTRINSIC AND INTRINSIC FRAUD

The principle that there has to be an end to litigation and that when a party has had his day in court the judgment thus rendered shall be final was first enunciated in 1702 by the Lord Keeper in the High Court of Chancery in the case of Tovey v. Young, 2 Vern. 437, S. C., 24 Eng. Rep. R. 93 (1702).

In the vacating of judgments, fraud plays an important part. Generally, fraud justifying equntable relief against enforcement of the judgment must be extrinsic to the issues. Con't. Nat'l Bank v. Holland Bank Co., 66 F. (2d) 823 (C.C.A. Mo. 1933). The leading case of United States v. Throckmorten, 98 U. S. 61, 25 L. ed. 93 (1878), held that fraudulent acts which will move a court of equity to set aside or annul a judgment or decree relate to frauds which are extrinsic to matters tried by the first court.

This decision was based on the same principle as that of Tovey v. Young in 1702. This relates only to cases between the same parties, to the same subject of controversy, and rendered by a court of competent jurisdiction. In general, that is, the courts will not again in such cases go into the merits of an action for the purpose of detecting and annuling the fraud. United States v. Throckmorten, supra.

We have stated that fraud to authorize a court's vacation of a former judgment must in the great majority of cases be extrinsic. State v. Wright, 56 S. W. (2d) 950 (Tex. Civ. App. 1933). Extrinsic fraud is some act or conduct of the prevailing party which has prevented a fair submission of the controversy and includes such acts as: keeping party from exhibiting his case fully, keeping party away from court, false promise of a compromise, no knowledge on part of defendant of the suit, where an attorney connives to defeat his client, and in all cases where there was not a real contest. Putnam v. Putnam, 126 Kan. 479, 268 Pac. 797 (1928). Extrinsic fraud is that which is practiced directly upon the party seeking relief against the judgment, which party has been prevented from presenting all of his case to the court so that but for such fraud the decision would be different. United States v. Throckmorten, supra. Failure to give legal notice to adversary has been held to be extrinsic fraud, also to prevent a witness from attending a trial. Sohler v. Sohler, 135 Cal. 323, 67 Pac. 282 (1902). The fraud of a party who occupied the dual capacity of executrix and mother, in pushing the claim of her son by her first marriage to heirship and distribution, was held to be extrinsic fraud in concealing the truth from the legal minor heirs, due to the fact that they were not properly represented at the trial. Sohler v. Sohler,, supra. Where the party who speaks falsely or who refuses to sepak occupies a fiduciary relationship, the better rule is that such fraud is extrinsic and will justify equitable interference. Latham v. McClenny, 36 Ariz. 337, 285 Pac. 684 (1930). The holding is an example where the fraud is generally considered intrinsic, but the court places a constructive trust on the property or the proceeds for the rightful owners. This is done where it would not be conscionable to let the wrongdoers retain the benefits of their wrongs. Still another example would be the case where perjured testimony is employed, usually considered intrinsic fraud, and held to be extrinsic fraud, because the jurisdiction of the court has been imposed upon by the use of such perjured testimony. Carey v. Carey, 121 Pa. Super. 251, 183 Atl. 371 (1936).

Intrinsic fraud is something that occurs in the course of an adversary proceeding, such as the production of forged documents, where adversary party has the opportunity to make the truth appear. Kasparian v. Kasparian, 132 Cal. App. 773, 23 P. (2d) 802 (1933). Intrinsic fraud includes such matters as: fraudulent testimony, perjured testimony, or any such matter which was actually presented to and tried by the court in rendering the judgment assailed. Intrinsic fraud as such will not be sufficient

grounds for setting aside the judgment by the holding of a majority of the courst today. Intrinsic fraud is usually that fraud by which a decree or judgment is obtained by false evidence upon issues within the case. Sohler v. Sohler, supra. A decree distributing deceased wife's estate could not be set aside merely because the husband falsely represented that the land was community property, the fraud being intrinsic, that is, perjured testimony. Meeker v. Waddle, 83 Wash. 628, 145 Pac. 967 (1915). A false allegation by an administrator that he and his sister are sole heirs of the decedent, whereby a decree of distribution is procured does not entitle heirs to relief in equity, the fraud being intrinsic. But this same administrator's sending remittances to a third person according to an annual custom of the deceased, so as to mislead the other heirs into believing that the deceased was still living, constituted extrinsic fraud so as to justify equitable relief, the court held. Monk v. Morgan, 49 Cal. App. 154, 192 Pac. 1042 (1920. Where title to land was obtained by intrinsic fraud in contravention of the terms of the will, the court placed a constructive trust on the land in favor of the rightful holders under the will, recognizing as a matter of law the finality of the first decree as a muniment of title in the wrongdoers. In this case the fraud was of an intrinsic nature but the court imposed an involuntary trust. Weyant v. Utah Savings Co., 54 Utah 181, 182 Pac. 189, 9 A.L.R. 1119 (1919). The last mentioned remedy given by the court is often used when the strict holding of extrinsic fraud would create too great an injustice. The failure of an administrator to give notice to a creditor of an estate of final settlement, according to an agreement between administrator and creditor, is not extrinsic fraud justifying equitable interference. Weyant v. Utah Savings Co., supra.

In summary the following may be said of extrinsic and intrinsic fraud in the vacating of judgments: most of the cases involve the setting aside of a judgment of a probate court, in which it is required that the fraud must be of an extrinsic nature, to vitiate the decree; but the courts do make exceptions where the facts and merits of the case so demand. The questiton of extrinsic and intrinsic fraud arises largely in cases of contracts, sales, divorce actions, wills, etc. Regardless of the subject of the action, the rules stated apply to all of the cases. There is not one definition of extrinsic fraud for wills and another for sales; the distinctions and differences remain the same. The fraud must be extrinsic to vacate the judgment, that is the strict and generally followed construction. However, courts will often decide cases on their respective merits, as to the equitable rights of parties involved, and impose a constructive trust, or employ a special construction upon the particular fraud in the given instance, so as to do equity and justice, but still lend lip-service to the distinctions normally articulated.

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