1894

The Masters Civil Liability for the Wrongful Acts of His Servants

Elmer Ellsworth Brown
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ORIGIN OF THE COURT OF EQUITY AND RELIEF THEREIN ON THE GROUND OF CONSTRUCTIVE FRAUD.

-BY-

ELMER ELLSWORTH BROWN

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CORNELL UNIVERSITY SCHOOL OF LAW.

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1894

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ORIGIN OF THE COURT OF EQUITY AND RELIEF THEREIN ON THE GROUND OF CONSTRUCTIVE FRAUD.

First, -- Equity is a branch of remedial justice founded upon principles of right, equality, and morality, as explained and promulgated in the decisions of its courts and it has the capacity of growth in the direction of its settled principles.

In the broad sense in which this term is sometimes used, it signifies natural justice.

In a more limited application, it denotes equal justice between contending parties. This is the moral significance, in reference to the rights of parties having conflicting claims; but applied to courts and their jurisdiction and proceedings, it has a more restrained and limited significance.

One division of courts, is into Courts of Law, and Courts of Equity. And Equity, in this relation and application, is a branch of remedial justice by and through which relief is afforded to suitors in its Courts.
The difference between the remedial justice of the courts of common law and that of the courts of equity is marked and material. That administered by the courts of law is limited by the principles of the common law, (which are to a great extent positive and inflexible), and especially by the nature and character of the process and pleadings, and of the judgments which those courts can render; because the pleadings cannot fully present all the matters in controversy, nor can the judgments be adapted to the especial exigencies which may exist in particular cases. It is not uncommon, also, for cases to fail in those courts, from the fact that too few or too many persons have been joined as parties, or because the pleadings have not been framed with sufficient technical precision.

The remedial process of the courts of Equity, on the other hand, admits, and generally requires that all persons having an interest shall be made parties, and makes a large allowance for amendments by summoning and discharging parties after commencement of suit.

The pleadings are usually framed so as to present to the consideration of the court the whole case, with its possible
legal rights, and all its equities,—that is, all the grounds upon which the suitor is or is not entitled to relief upon the principles of Equity.—And its final remedial process may be so varied as to meet the requirements of these equities in cases where the jurisdiction of the courts of equity exists, by commanding what is right, and prohibiting what is wrong. In other words its final process is varied so as to enable the courts to do that equitable justice between the parties that the case demands, either by commanding what is to be done, or prohibiting what is threatened to be done.

The principles upon which, and the words and forms by and through which justice is administered in the United States, are derived to a great extent from those which were in existence in England at the time of the settlement of this country; and it is therefore important to a correct understanding of the nature and character of our own jurisprudence, not only to trace it back to its introduction here on the early settlement of the colonies, but also to trace the English jurisprudence from its earliest conception as the administration of law, founded in principles, down to that period.

It is in this way that we are enabled to explain many
things in our own practice which would otherwise be entirely obscure. This is particularly true of the principles which regulate the jurisdiction and practice of the courts of Equity, and of the principles of Equity as they are now applied and administered in the courts of law which at the present day have equitable jurisdiction conferred upon them by statutes passed for that purpose. And for the purpose of a competent understanding of the Equity in England, it is necessary to refer to the origin of the equitable jurisdiction there, and, to trace its history, inquiring upon what principles it was originally founded, and how it has been enlarged and sustained.

The study of Equity Jurisprudence, therefore, comprises an inquiry into the origin and history of the courts of equity, the distinctive principles upon which jurisdiction in Equity is founded; the nature, character, and extent of the jurisdiction itself; its peculiar remedies; the rules and maxims which regulate its administration; its remedial process and proceedings, and modes of defence; and its rules of evidence and practice.
The Courts of Equity may be said to have their origin as far back as 1327 to 1377, where the King held the Great Court in which he administered justice in person, with the assistance of his spiritual advisor. The Chancellor.

Of the officers of this court the chancellor's was one of great trust and confidence, next to the King himself; but his duties do not distinctly appear at the present day.

On the introduction of seals, he had the keeping of the King's seal, which he affixed to charters and other instruments. As writs came into use, it was made his duty to frame and issue them from his court, which as early as the reign of Henry II. was known as the Chancery. And it is said that he exercised at this period a sort of equitable jurisdiction by which he mitigated the rigor of the common law— to what extent is not definitely known. He is spoken of as one who "annuls unjust laws, and executes the rightful commands of the pious prince, and puts an end to what is injurious to the people or to morals,"-- which would form a very ample jurisdiction; but it seems probable that this was
according to the authority or direction of the king, given from time to time in relation to particular cases. He was a principle member of the kings court, after the conquest, in which, among other things, all applications for the special exercise of the prerogative in regard to matters of judicial cognizance were discussed and decided upon.

In connection with the council, he exercised a separate authority in cases in which the council directed the suitors to proceed in Chancery. The court of Chancery is said to have sprung from this council. But it may be said that it had its origin in the prerogative of the King, by which he undertook to administer justice, on petition to himself, without regard to the jurisdiction of the ordinary courts, which he did through orders to his chancellor.

The great council or parliament also sent matters relating to the King's grants, etc., to the chancery; and it seems that the chancellor, although an ecclesiastic, was the principal actor as regards the judicial business which the select or Kings council, as well as the great council, had to advise upon or transact.

In the time of Edward III. proceedings in Chancery were
commenced by petition or bill, the adverse party was summoned
the parties were examined, and Chancery appears as a distinct
court for giving relief in cases which required extraordinary
remedies, the king having, by a writ referred all such matters
as were of grace to be dispatched by the Chancellor or by the
keeper of the privy seal.

It may be considered as fully established as a separate
and permanent jurisdiction from the 17th. year of Richard II.

In the time of Edward IV. the chancery had come to be
regarded as one of the four principal courts of the kingdom.
From this time its jurisdiction and progress of its jurisdict-
ion becomes of more importance to us.

It is the tendency of any legal system, when reduced to
a practical application, to fail of affecting such justice
between party and party, as the special circumstances of a
case may require, by reason of the minuteness and inflexibil-
ity of its rules and the inability of the judges to adapt its
remedies to the necessities of the controversy under consid-
eration. This was the case with the Roman Law; and to
remedy this defect, edicts were issued from time to time,
which enabled the consuls and praetors to correct " the
scrupulosity and mischievous subtlety of the law," and from these edicts a code of equitable jurisprudence was compiled. So the principles and rules of the common law, as they were reduced to practice became in their application the means of injustice in cases where special equitable circumstances existed, of which the judge could not take cognizance because of the precise nature of its titles and rights, the inflexible character of its principles, and the technicality of its pleadings and practice. And, in a manner somewhat analogous to the Roman mode of modification, in order to remedy such hardships, the prerogative of the king or the authority of the great council was exercised in ancient times to procure a more equitable measure of justice in the particular case, which was accomplished through the Court of Chancery.

This was followed by the "invention" of the writ of subpoena, by means of which the chancery assumed, upon a complaint made directly to that court, to require the attendance of the adverse party, to answer to such matters as should be objected against him. Notwithstanding the complaints of the commons, from time to time, that the course of proceeding
in Chancery "was not according to the course of the common law, but the practice of the holy church," the king sustained the authority of the chancellor. The right to issue the writ was recognized and regulated by statute, and other statutes were passed confirming jurisdiction where it had not been taken before.

In this way, without any compilation of a code, a system of equitable jurisprudence was established in the court of chancery enlarging from time to time, the decisions of the court furnishing an exposition of its principles and of their application.

Much of equity jurisprudence exists independent of any statute, and is founded upon an assumption of a power to do equity, having its first inception in the prerogative of the king, and his commands to do justice in individual cases, extending itself through the action of the chancellor, to the issue of a writ of summons to appear in his court without any special authority for that purpose and upon the return of the subpoena, to the reception of a complaint, to a requirement upon the party summoned to make answer to that complaint, or judgment upon the merits of the matters in controversy,
according to the rules of equity and good conscience.

It appears as a noticeable fact that the jurisdiction of the chancery proceeded originally from, and was sustained by successive kings of England against the repeated remonstrances of the commons, who were adhering to the common law. The commons were jealous of the introduction by the ecclesiastics, of the Roman Law, and in the reign of Richard II. the barons protested that they would never suffer the kingdom to be governed by the Roman Law, and the judges prohibited it from being any longer cited in the common law tribunals."

This opposition of the barons and the common law judges furnished very sufficient reasons why the chancellor should not profess to adopt that law as the rule of decision.

In addition to this, it was not fitted, in many respects, to the state of things existing in England; and so the chancellors were of necessity compelled to act upon equitable principles as expounded by themselves. In later times the common law judges in that country have resorted to the Roman Law for principles of decisions to a much greater extent than they have given credit to it.

Since the time of Henry VIII. the Chancery Bench has
been occupied by some of the ablest lawyers which England has produced, and they have given to the proceedings and practice in equity definite rules and forms, which leave little to the personal discretion of the chancellor in determining what equity and good conscience require.

The discretion of the chancellor is a judicial discretion to be exercised according to the principles and the practice of the court.

The avowed principle upon which the jurisdiction was at first exercised was the administration of justice according to honesty, equity, and conscience— which last was unknown to the common law as a principle of decision.

In the 15th year of Richard II. two petitions addressed to the King and the lords of parliament were sent to the chancery to be heard, with the authority of parliament, that, "let there be done that which right and reason and good faith and good conscience demand in the case." These may be said to be the general principles upon which equity is administered at the present day.
EQUITY JURISDICTION.

It would be next to an impossibility to reduce a jurisdiction so extensive and of such diverse component parts to a rigid and precise classification. But suffice it to say that where the courts of law do not recognize any right, and therefore could give no remedy, but where the courts of equity recognize equitable rights and could of course give equitable relief, its jurisdiction exists. Also where the courts of equity administer equitable relief for the infraction of legal rights, in cases in which the courts of law, recognizing the right, give a remedy according to their principles, modes and forms, but the remedy is deemed by equity inadequate to the requirements of the case.

This class embraces fraud, mistake, accident, administration, legacies, contribution, and cases where justice and conscience require, the cancellation or reformation of instruments, or the rescission, or the specific performance of contracts. The courts of law relieve against fraud, mistake,
and accident where a remedy can be had according to their modes and forms; but there are many cases in which the legal remedy is inadequate for the purposes of justice, and herein of—

Constructive Fraud.

Constructive fraud in Equity is a term descriptive of certain acts and contracts which equity regards as wrongful and for which its courts give the same or similar relief as that granted in cases of actual fraud.

The cases of constructive fraud may be gathered under the following heads:

First: (a), Fraud may be apparent from the intrinsic nature and subject of the bargain itself, such as no man in his senses and not under delusion would make, on the one hand, and no honest or fair man would accept on the other.

Fraud may be inferred from the terms of the contract, as inadequacy of consideration without proof of fraud; ordinarily this is not the case, but if the inadequacy shocks the court, then fraud may be inferred; if considered, in connection with old age, mental weakness, or pecuniary necessity, equity will grant relief.

In Shaddle v. Disborough, 30 N.J.Eq., 370, Where a person
agrees to exchange his farm for city lots, but made no effort to ascertain their value, and there was no misrepresentation by the owner. On a bill for specific performance he set up as a defense that they were worth less than he supposed. Their value not being so inadequate as to be evidence of fraud. Held, that the defense could not prevail.

Also in the case of Davidson v. Little, 22 Pa.St.,245, a conveyance of land, free from actual fraud, is not void merely because the price was shockingly inadequate. Though an unexecuted contract will not be enforced in a court of equity, if it seems to be unconscionable, yet after it is executed by the parties, it will not be declared void on that ground alone, except in the case of an heir expectant.

Gross inadequacy of price is only evidence of fraud.

But even if the conveyance were void for gross inadequacy of price, it can not be disputed by mere possessors of the land without title, neither the party who conveyed nor any one claiming under him, nor his creditors disputing it.

Harrison v. Guest, 6 De.Gex, M.& G.,424 is a very illustrative case. An old man seventy one years of age, bedridden, illiterate, without any independent professional
advice and without consulting his friends or relatives, conveyed property worth 400$, for the consideration of being provided with board and lodging during the rest of his life. He lived only six weeks after making the conveyance, his representatives sought to have the conveyance set aside.

The evidence showed that he had refused to employ professional advice for himself, that he was able to understand the nature of the transaction, and that there were no circumstances of oppression; the court held that there was not sufficient ground to impeach the conveyance.

In Scovill v. Barney, 4 Or., 288, the court said that inadequacy of price or mental weakness standing alone, will not warrant the interposition of equity, but when both are combined, relief will be granted. It is, perhaps, not possible to reconcile this naked proposition with the authorities.

(b). Contracts stipulating usury are constructively fraudulently.

The policy of prohibiting usury has, generally, been abandoned, and the Statutes concerning it repealed, in England and in several of the American States.

In some of the states which still adhere to the policy,
the usurious contract itself, the instrument by which it is evidenced, and all its securities, are declared to be utterly void, in others, the stipulation for the usurious excess over the legal interest is alone made void; while in other states a further penalty is added to this usurious excess.

(c). So all gaming and wager agreements are constructively fraudulent. Although at common law certain kinds of contracts, based upon wagers, were not unlawful, while those made upon a gaming consideration were illegal.

The modern legislation of England and the United States declares all gaming and wagering agreements, and the instruments by which they are evidenced, or secured, to be illegal, null and void.

(d). Likewise all contracts in restraint of marriage are fraudulent as being contrary to public policy.

The laws of England and the United States regard marriage relation as the very foundation of society. Since the true conception of marriage assumes and requires a perfectly free consent and union of the two spouses, Equity has, from its earliest period, treated all agreements, executory or executed between the immediate parties, or between third persons which
might directly or indirectly interfere in any degree with this absolute freedom, either by promoting or restraining marriage, as opposed to public policy and illegal and has therefore declared them null and void.

Analogous to marriage brokerage contracts, and depending upon the same reasons, are agreements to pay a compensation to a person for using his influence with a testator to procure a will, devise, or bequest to be made in favor of the promisor. (e). Contracts in general restraint of trade are constructively fraudulent as being inconsistent with the general policy of the law. Unreasonableness in such contracts is the criterion. But agreements in partial restraint of trade are enforceable if reasonable, and entered into for valuable consideration.

In the case of Hubbard v. Miller, 27 Mich., 15, the court said, "Contracts in restraint of trade, which, considered with reference to the situation, business and objects of the parties, and in the light of all the surrounding circumstances, appear to have been made for a just and honest purpose and for the protection of legitimate interests, and are reasonable as between the parties and not specially injurious
to the public, will be upheld, and the weight or effect to be given to the surrounding circumstances is not affected by any presumption for or against the validity of the restriction. Such contracts, if unobjectionable in other respects, require no greater pecuniary or valuable consideration to support them than any other contract; and if objectionable in other respects, no amount of pecuniary consideration will render them valid.

Where one who is engaged in any branch of business, purchases the business and stock of another engaged in the same branch of business, on the condition that the vendor shall not further carry on this particular branch of business within a reasonable extent of territory, such restraint of trade, being reasonable and fair between the parties will be enforced; and the fact that the price paid does not exceed the cost of the goods purchased does not affect the validity of the contract.

(f). All contracts to control official conduct are illegal and against public policy.

In the case of Neguire v. Corwine, 11 Otto, 108, the action was based on a contract between A. and B. whereby in
consideration of A's procuring B's appointment as special
counsel in certain causes against the United States, and aid-
ing him in managing the defence of them, B agrees that he
will pay A. one-half of the fee which he may receive from the
government. In delivering the opinion of the court, Mr.
Justice Swayne said: "The law touching contracts like the
one here in question, has been often considered by this court,
and is well settled by our adjudications—It cannot be
necessary to go over the same ground again. To do so would
be a waste of time. The object of this opinion is rather to
vindicate the application of our former rulings to this record
than to give them new support. They do not need it.

Frauds of this class to which the one here disclosed be-
longs are an unmixed evil. Whether forbidden by statute or
condemned by public policy, the result is the same. No
legal right can spring from such a source. They are the
sappers and miners of the public welfare, and of free govern-
ment as well. The latter depends for its vitality upon the
virtue and good faith of those for whom it exists, and of
those for whom it is administered. Corruption is always the
forerunner of despotism."
In Trist v. Childs, 21 Wallace, 441, the court said: while recognizing the validity of an honest claim for services honestly rendered. "But they are blended and confused with those which are forbidden," the whole is a unit, and indivisible. That which is bad destroys that which is good, and they perish together. Where the taint exists it affect fatally, in all its parts, the entire body of the contract. Where there is turpitude, the law will help neither party." These remarks apply here. The contract is clearly illegal, and this action was brought to enforce it. The case being fatally and fundamentally defective, he could not recover."

Agreements which stipulate for private services to be rendered by dealing with individual legislators, privately or personally are against public policy and void. Our law permits a private citizen to endeavor to influence a legislature, and to obtain the enactment of a statute, in an open public manner, by arguments directed to the whole body or to a committee, in the same manner as arguments are presented to a court by counsel.

To this end, agreements for the employment of an agent or attorney to act in the same manner are valid. But con-
tracts which go beyond this line, and stipulate for private services to be rendered by dealing with individual members, privately and personally, have been uniformly condemned by courts of the highest authority. The varieties of such agreements are very numerous.

In the case of Marshall v. B. & O. R. R. Co., 16 Howard, 314, Grier J. said, that all contracts for a contingent compensation for obtaining legislation, or to use personal, or any secret, or sinister influence on legislators, are void.

Secrecy, as to the character under which the agent or solicitor acts, tends to deception, and is immoral and fraudulent, and where the agent contracts to use such secrecy, or voluntarily does use it, he cannot have the aid of a court of equity to recover compensation.

(h). Agreements having a tendency to corrupt good morals are contrary to public policy and, therefore void.

It is enough in this connection to say that all agreements in which the consideration past or future, or the executory terms stipulating for acts to be done or omitted, are contrary to good morals, are illegal and void in equity, and with a very few exceptions, at the common law. This doctrine
applies in equity, whatever be the external form of the con-
tact, or its immediate purpose, or the particular nature of
its illegality.

CONTRACTS WHICH AMOUNT TO CHAMPERTY OR MAINTENANCE .

These being highly criminal at the common law were
guarded against with a jealous care, but the common law rules
concerning such agreements have been greatly modified in the
United States, and to a great extent abrogated. As, an
agreement giving counsel an interest in or a part of the
property to be recovered as a contingent fee for his services
in a litigation is valid. But, contracts stipulating for
the compounding a felony, the forbearance to prosecute a
crime, or the abandonment of a pending criminal prosecution
are void with all securities therein.
CONSTRUCTIVE FRAUD FROM THE CIRCUMSTANCES AND CONDITIONS OF
THE PARTIES; FOR IT IS AS MUCH AGAINST CONSCIENCE TO TAKE
ADVANTAGE OF A MAN’S WEAKNESS OR NECESSITY AS OF HIS IGNORANCE

The criterion of all such contracts is the want of
a true, legal consent.

(a). Fraud will be inferred in all contracts with idiots
lunatics, and persons of unsound mind.

In the case of Curtis by Calkins v. Brownell, 42 Mich.,
165, where a mortgage, made by a man who had been insane
some time before and had periodical recurrences of insanity,
and was insane at the time he gave the mortgage, though he
had all along managed his own affairs with average correct-
ness and had been treated by his neighbors as competent to do
business, even while they considered him of unsound mind, was
not considered binding and was set aside as being made while
non compos mentis, though not so manifestly insane as to
make the conduct of the mortgagee fraudulent in making the
bargain which it was meant to secure, even though he had been
given sufficient warning to put him on his guard.

(b). But if one is incapacitated and the contract is for his benefit, and is not tainted with fraud, equity will not interfere.

In the case Selby v. Jackson, 6 Beaven, 192, the court under the circumstances refused to set aside deeds executed by one under restraint in a lunatic asylum, under medical certificate. When a party, without authority, but bona fide assumes the management of the property of one mentally incompetent, the court will not, on his recovery, restore to him his property without making an equitable allowance for the expenses and liabilities.

On a bill seeking to set aside deeds in toto, and praying no alternative relief, the court will not adversely grant an accounting on the footing of their validity.

(c). Agreements entered into in good faith and in ignorance of the mental unsoundness of the grantor.

Case of Ashcraft v. DeArmond, 44 Iowa, 229. In this action it was sought to set aside a conveyance on the ground of the insanity of the grantor, and it appeared that the insanity had been of slow and steady growth, it was held that
evidence respecting the mental condition of the grantor at a period subsequent to the time of execution of the conveyance, was competent, and that rumors in the neighborhood of the party alleged to be insane, respecting his mental condition were not admissible in evidence; and also, that equity will not interfere to set aside a conveyance, on the ground of the insanity of the grantor, to one who shall have purchased in good faith and for value, in ignorance of the mental condition of the grantor.

(d). Contracts with parties mentally weak are ably discussed in the case of Allore v. Jewell, 4 Otto, (U.S.). Justice Field says, "It is necessary in order to secure the aid of equity, to prove that the deceased was at the time insane, or in such a state of mental imbecility as to render her entirely incapable of executing a valid deed. It is sufficient to show that, from her sickness and infirmities, she was at the time in a condition of great mental weakness, and that there was gross inadequacy of consideration for the conveyance." Citing Harding v. Wheaton, 2 Mason, in which Justice Story said "Extreme weakness will raise almost a necessary presumption of imposition, even when it stops short
of legal incapacity; and though a contract in the ordinary course of things, reasonably made with such a person, might be admitted to stand, yet if it should appear to be of such a nature as that such a person could not be capable of measuring its extent or importance, its reasonableness or its value, fully and fairly, it cannot be that the law is so much at variance with common sense as to uphold it."

In same caso C.J.Marshall being quoted "if these deeds were obtained by the exercise of undue influence over a man whose mind had ceased to be the safe guide of his actions, it is against conscience for him who has obtained them to desire any advantage from them. It is the peculiar province of a court of conscience to set them aside."

(e). Where persons in pecuniary distress contract, the presumption arises that they were forced to sacrifice, and equity may under the circumstances, grant relief.

---Of Distress Produced by Misrepresentation.---

In the case Kuelkamp v. Hidding, 31 Wis. 503. For what misrepresentations a conveyance of land will be cancelled.

It may be true in general, that the misrepresentations for which equity cancels a conveyance of land, are such as
relate to quantity, quality, situation or value of the property, or the pecuniary responsibility of the purchaser, or something of that nature. But equity does not limit itself by strict rules and strict definitions in matters of fraud. It leaves the way open to redress wrongs committed by means of fraud, in whatever forms it may appear.

A misrepresentation producing terror and confusion of mind, unsettling the judgment, and depriving the party of the free use of his reasoning faculties, where such misrepresentation was purposely made in order to take advantage of the resulting fear and mental derangement, to secure a hard and unconscionable bargain, it was held to be a fraud in which equity will relieve, in a proper case. While a sale and conveyance will not be set aside solely on the ground of inadequacy of price, yet such inadequacy, especially if gross, is evidence of fraud.

The complaint in this case shows that when the plaintiff conveyed his lands to defendant, he was illiterate and ignorant of business; that he was agitated with fear by reason of misrepresentations as to his personal peril from the anger of his neighbors, artfully made to him by the defendant to
induce him to part with his property for less than its value; that the sale and conveyance were made hastily and in secret giving plaintiff no opportunity to consult with his friends or counsel; and that the price paid did not exceed one-third of the value of the land. It was held that these averments show good grounds for the interposition of a court of conscience.

(f). Of Intoxication as a ground of relief in a court of Equity:

The degree of intoxication which merely exhilarates, and does not materially affect the understanding and the will, does not constitute a defense to the enforcement of an executory agreement, and much less is it a ground for affirmative relief.

An habitual drunkard is not necessarily an incompetent person. An intoxication which is absolute and complete, so that the party is for the time entirely deprived of the use of his reason, and is wholly unable to comprehend the nature of the transaction and of his own acts, is a sufficient ground for setting aside or granting other appropriate affirmative relief against a conveyance or other contract made while in
that condition, even in the absence of fraud, procurement, or undue advantage by the other party. If a person is thus completely intoxicated, a party openly dealing with him must of course, perceive his condition; it would seem that the party knowingly taking the conveyance or contract under these circumstances was necessarily chargeable with inequitable conduct.

(g). Transactions Presumptively Invalid between persons standing in a Fiduciary Relation.

Courts of equity have carefully and wisely refrained from defining the particular instances of fiduciary relation in such a manner that other and perhaps new cases might be excluded.

It is settled by an overwhelming weight of authority that the principle extends to every possible case in which a fiduciary relation exists as a fact, in which there is confidence reposed on one side, and the resulting superiority and influence on the other.

The relation and the duties involved in it need not be legal; it may be moral, social, domestic, or merely personal.

In the foregoing illustrations there has been an actual
undue influence consciously and designedly exerted upon a party who was peculiarly susceptible to such external pressure, on account of his mental weakness, old age, ignorance, necessitous condition, and the like...

The existence of any fiduciary relation was unnecessary and immaterial.

The undue influence being established as a fact, any contract obtained or other transaction accomplished by its means is voidable, and is set aside without the necessary aid of any presumption. The single circumstances now to be considered is the existence of some fiduciary relation, some relation of confidence existing between two parties without the element of mental weakness, old age, ignorance, or pecuniary distress; if any of the latter elements exist they will simply exist incidentally and not necessarily; there need be no intentional concealment, no misrepresentation, no act of fraud.

The doctrine to be examined arises from the very conception and existence of a fiduciary relation. Equity admits the legality of certain bona fide transactions between the parties, yet, because every fiduciary relation implies a
condition of superiority held by one of the parties over the other, in all transactions between them, by which the superior party obtains a possible benefit. Equity raises a presumption against its validity, and casts upon that party the burden of proving affirmatively the compliance with equitable requisites and of thereby overcoming the presumption.

One principle underlies the whole subject in all its applications; and this principle is stated in both a negative and in an affirmative form. Its negative signification is most aptly put, in a recent decision by a most able judge: "The broad principle on which the court acts in cases of this description is, that wherever there exists such a confidence, of whatever character that confidence may be, as enables the person in whom confidence or trust is reposed to exert influence over the person trusting him, the court will not allow any transaction between the parties to stand, unless there has been the fullest and fairest explanation and communication of every particular resting in the breast of the one who seeks to establish a contract with the person so trusting him."

The principle was affirmatively stated with equal
accuracy in the same case on appeal, as follows; "The jurisdiction exercised by courts of equity over the dealings of persons standing in certain fiduciary relations, has always been regarded as one of the most salutary description. The principles applicable to the more familiar relations of this character have been long settled by many well-known decisions, but the courts have always been careful not to fetter this useful jurisdiction by defining the exact limits of its exercise.

Wherever two persons stand in such a relation that, while it continues, confidence is necessarily reposed by one, and the influence which naturally grows out of that confidence is possessed by the other, and this confidence is abused, or the influence is exerted to obtain an advantage at the expense of the confiding party, the person so availing himself of his position will not be permitted to retain the advantage, although the transaction could not have been impeached if no such confidential relation had existed."

Cowce v. Cornell, 71 N.Y.,91, is an excellent illustrative case in this relation -- Mr. Cornell deceased was the grandfather of Mr.Strong who was looking after and managing
his grandfather's business which was quite extensive as the old gentleman was a very wealthy man. Mr. Strong after a while expressed a desire to enter into business for himself and be independent of his grandfather. It appears that the old gentleman bore the expenses of his own household and those of his grandson also. That Mr. Strong was furnished a dwelling house next to that of his aged ancestor.

Mr. Cornell persuaded his grandson to abandon his idea of going into business for himself, and to continue the management of his own affairs, at the same time stating that there was money enough for them all.

Mr. Cornell expressed a desire to compensate his sons kindness, by making some change in his will, but his lawyer advised him to leave the will as it then stood and make the compensation in some other manner. By virtue of this legal advice, Mr. Cornell executed a promissory note favor of his grandson for $20000, and this action is brought to have the note set aside and declared void on the grounds of old age of the maker and the circumstances pointing to undue influence, together with the enormous amount named therein as compensation. But the court held that the grandfather could place
any estimate on the value of the grandson's services he chose and that no arts or stratagem whatever are shown in the evidence against the young man, and hence the element of constructive fraud is wanting to vitiate the validity of the note.
ALL FRAUDULENT TRANSACTIONS AGAINST THIRD PERSONS WHO ARE NOT PARTIES TO THE AGREEMENT ARE COGNIZABLE IN A COURT OF EQUITY.

This proposition may be illustrated in the case where a composition is made by a debtor with his creditors upon the basis of his payment to all who join in the transaction the same proportionate share of their claims and of being therefore discharged by them from all further liability, a secret agreement by the debtor with one of the creditors for the latter's joining in the composition, whereby the debtor pays or secures to the favored creditor a further sum of money or amount of property, or greater advantage than that received and shared alike by all the others, is a fraud upon such other creditors, and is voidable.

If the agreement be executory, it cannot be enforced against the debtor in equity or at law; the security may be set aside by a court of equity, and the amount paid by the debtor in pursuance of the contract may be recovered back by
The relief, defensive or affirmative, thus given to the debtor does not rest upon any consideration of favor due and shown to him, but wholly upon motions of policy, to protect the rights of the other creditors, and to secure them against such frauds.

Lawrence v. Clark, 33 N.Y., 128, was a case where a party in making a composition with his creditors, secretly entered into an agreement with one of them and made a promissory note in his favor as an inducement to him to enter into such composition; the note was held as void as being a fraud against the other creditors. The same is true if the note is given by a third person not the debtor, and any amount can be recovered back when so paid. Solinger v. Earle, 82 N.Y. 393.

In Larney v. Bailey, 43 Md., 10, The rule is laid down as follows: In a composition agreement a debtor professes to deal with all creditors entering it on terms of perfect equality, and a secret agreement giving a creditor an undue advantage vitiates the agreement as being a fraud upon the other creditors, who may sue for and recover the full amount of their original indebtedness, less the amount they have
received under the composition, and it is not essential that
the composition agreement should first be rescinded, and the
money recovered under it be returned.

This would seem to be the just and equitable effect of
such a secret bargain upon the rights of the composition
creditors.

Argall v. Cook, 43 Conn., 160, holds that the fact of a
debtor intending to pay certain of the creditors joining in a
composition deed, in full, out of his future earnings, does
not invalidate the composition as to other creditors, if
there is no agreement tending to defraud them.
EQUITY JURISPRUDENCE THE RULWARK OF INDIVIDUAL PROTECTION AND THEREFORE OF CIVIL LIBERTY.

I have endeavored to originate the great liberal principles possessed by the Court of Equity and not possessed by any other system of jurisprudence, and trace this liberty through successive cases, which liberality I shall dominate the influence of Christianity upon a vigorous and technical set of forms and customs.

By virtue of this liberality or Christian influence the aged are made young again, so far as protection is concerned; the infant is made to have discretion and understanding; the weak-minded are given strength and even the lunatic is in some respects restored to consciousness and is treated as having a sound and disposing mind and memory.

The strong man also is protected and made to see and understand where he did not before realize the situation, by reason of deceit, fraud, mistake, accident or undue influence. Wonderful and vastly important was this change.
"There is no business in which men now engage which has gone through such changes in the past century as the practice of law.

Some of the blue laws of the ducking stool age may remain unnoticed on the statute books, and the old common law-forms may hold a precarious footing in the courts of a few states, but the real current of business runs in a different channel.

Evolution has a shining example in our courts.

Once a Court of Equity had a very narrow jurisdiction, and if a thing was legal all of wicked intent could shelter themselves under the law.

Once the practice was so complicated by antiquated and inconsistent forms that the wisest was often lost in its verbiage.

But all this has passed away under a better civilization.

FINIS.