

## NOTES *and* COMMENT

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### Fraud As Ground For Review Of Decree Under Section 38, Act No. 496

By ALBERTO O. VILLARAZA

**F**RAUD is a word that has frequently been used, but seldom well understood. The term has a broad meaning and cannot be comprised in a single definition without limiting its scope. According to an American decision, "the word is kaleidoscopic. It is infinite. Fraud being infinite and taking a protean form at will, were courts to cramp themselves by defining it with a hard and fast definition, their jurisdiction would cunningly be circumvented at once by new schemes beyond the definition". (Stonemets vs. Heads, 154 S. W. 108).

It is not and cannot be the aim, therefore, of this comment to establish a fixed meaning for the term, calculated to meet every contingency in which necessity for its interpretation may arise. The author simply desires to clarify the meaning of the term as found in Section 38 of Act No. 496.

Said Section 38 provides, in part: "Every decree of registration shall bind the land and quiet title thereto. . . . It shall be conclusive upon and against all persons including the Insular Government. . . . Such decree shall not be opened by reason of the absence,

infancy, or other disability of any person affected thereby, nor by any proceeding in court for reversing judgments or decrees; subject, however, to the right of any person deprived of land or of any estate therein, by decree of registration *obtained by fraud*, to file in the competent court of first instance a petition for review within one year after the entry of the decree. . . ." (Italics ours).

A decree of registration is an order of the court prepared and issued by the Chief of the General Land Registration Office pursuant to a previous order of the court after final judgment in a registration case adjudicating and confirming the title of a person to the land involved in the registration proceeding. (Section 21, Act No. 2347). This decree of registration, or decree of title, after entry is made by the Chief in his records, is transmitted to the Register of Deeds of the province where the land is located. Thereupon it is transcribed by the Register of Deeds in his Registration Book, which entry becomes the original certificate of title. (Sec. 41, Act 496).

Once the Chief, of the General Land Registration Office has en-

tered the decree which he has prepared, no person may question the title of the person in whose name it appears, unless, according to Section 38, he presents his petition for review of the decree within one year from such entry. And the only ground for the review is fraud.

What, then, is fraud, as contemplated by Section 38? The American Supreme Court has defined fraud, in its generic sense, as "all acts, omissions, and concealments involving a breach of a legal or equitable duty, resulting in damage to another". (Moore vs. Crawford, 130 U. S. 122).

Fraud has been classified into actual or moral fraud, and constructive or legal fraud. The first type of fraud has been defined by our Supreme Court as dishonesty of some sort (Grey Alba vs. De la Cruz, 17 Phil. 49). American courts have defined it as deception (Finney vs. Morris, 67 N. Y. 283), or fraud that is intentionally practised to induce another to part with his property or to surrender some legal right and which accomplishes the end designed. (Giuld vs. More, 155 N. W. 44).

Constructive fraud, on the other hand, is a breach of a legal or equitable duty which, irrespective of the moral guilt of the fraud feisor, the law declares fraudulent because of its tendency to deceive others, to violate public or private confidence, or to injure public interest. (Frost vs. Latham, 181 Fed. 866). Constructive fraud is presumed from the relation of the parties to the transaction, or the circumstances under which it takes place. It is said that it involves a mere mistake of fact. (Katham vs. Comstack, 38 L.R.A. (NS) 201).

Actual and constructive frauds may then be distinguished from one another in that in actual fraud the intent to deceive is an essential element. (Stevens vs. Alabama State Land, 121 Ala. 450).

In an early case, our Supreme Court held that only actual fraud can legally be made the basis for the reopening of the decree, as constructive fraud is not sufficient to authorize the Court of First Instance to modify its decree. (Grey Alba vs. De la Cruz, *supra*).

However, cases later arose, which our Supreme Court dismissed, although they were based on actual fraud, because the Court did not consider the ground sufficient. (Anuran vs. Aquino, 38 Phil. 29; Bagaboyboy vs. Dir. of Lands, 37 O. G. 1959). In the first case cited, the Court held. "There can be no question as to the right of any person affected adversely by a judgment or decree to maintain an action to enjoin its enforcement and to have it declared a nullity on the ground of fraud or collusion practised on the very matter of obtaining the judgment when such fraud is extrinsic or collateral to the matter involved in the issues raised at the trial which resulted in such judgment." And in the second case mentioned, the Court likewise refused to reopen the decree because when the alleged fraud is intrinsic the same may not be a ground for review. The fraud intended by law must be extrinsic. There can, therefore, be an actual but intrinsic fraud, and this can not support a petition for review. Thus, our Supreme Court has added another qualification to the kind of fraud that can be made a ground for the review of a decree of registration.

Extrinsic fraud, according to our Supreme Court, must be understood as a deception calculated to deprive the interested party of his day in court, thus preventing him from asserting his rights to the property in question. (*Bagaboyboy vs. Director*, *Supra*). But this must necessarily be coupled with the intent to defraud, for if there was no such intent, the fraud would be merely constructive. Of extrinsic fraud, the Supreme Court of California has this to say: "There is extrinsic fraud if the unsuccessful party is really prevented by the fraudulent contrivance of the adversary from having a trial; but when he has a trial, he must be prepared to meet and expose perjury then and there." (*Pico vs. Cohn*, 13 L.R.A. 336, 339). The same view has been adopted by the Supreme Court of Tennessee in *Keith vs. Alger* (85 S.W. 71). The petitioner, in cases of review, has reason to be heard if his petition shows that by the fraudulent act of the prevailing party he has been prevented from fairly presenting his case in the original action whereby an unjust judgment has been obtained. (Note to *Little Rock Co. vs. Wells*, 54 A.m. St. Rep. 218).

A party to an action maybe prevented from making a proper defense by false return of the service of process (*Peek, etc. Co. vs. Pella, etc. Co.*, 19 Colo. 222); or, by procuring process to be served by publication without depositing a copy of the summons addressed to the defendant on the allegation that his residence is unknown to the plaintiff (*Johnson vs. Coleman*, 99 Am. Dec. 193); or by fraudulently obtaining a letter of attorney purporting to authorize a confession of judgment

(*Johnston vs. Loop*, 2 Tex. 331); or, by inducing the attorney employed by the defendant to prove recreant to his client (*De Louis vs. Meek*, 50 Am. Dec. 491); or, by collusion or conspiracy of two or more persons, as when they conspire to prevent the appearance of a party at the trial (*Douthit vs. Douthit*, 133 Ind. 26), or they, being charged with the duty of representing a party, conceal from the court his interest in the controversy or his defense or cause of action (*Grifford vs. Hicks*, 22 Am. St. Rep. 549); or, by making an agreement or representation from the purpose of preventing an appearance or defense in the original action, and reliance upon which has had the effect intended (*Dandridge vs. Harris*, 1 Am. Dec. 465).

A collusion, therefore, between an administrator and a third person resulting in an order or judgment whereby an interested party is unjustly deprived of his rights in or to the estate under administration, gives rise to a valid cause for the review of the judgment or decree (*Anuran vs. Aquino*, *supra*).

From the foregoing discussion, it can be concluded that a decree of registration may not be opened except on the ground of actual extrinsic fraud. Fraud, as contemplated by Section 38 of Act 496, is an intentional act, omission or concealment involving a breach of a legal or equitable duty by which an aggrieved party has been deprived of his day in court or of the chance of presenting his cause of action or defense, resulting in his damage. This must be so, for according to the learned opinion of Justice Miller, "endless litigation, in which nothing was finally determined, would be

worse than occasional miscarriage of justice; so the rule is that a final judgment or decree can not be annulled merely because it can be shown to have been based on intrinsic fraud, for if it can be done once, it can be done again and again, ad infinitum." (In U. S. vs. Throckmorton, 98 U. S. 61).



### *A Sailor's Retort*

RUFUS CHOATE, in an important assault and battery case, at sea, had Dick Barton, chief mate of the clipper ship "Challenge," on stand.

"And now tell me in what latitude and longitude you crossed the equator."

"I shan't."

"Ah, you refuse, do you?"

"Yes—I can't."

"Indeed! You are chief mate of a clipper ship, and unable to answer a simple question!"

"Yes, 'tis the simplest question I ever had asked me. Why, I think every fool of a lawyer knew that there ain't no latitude at the equator."

—*Modern Eloquence*, Vol. 10