

# Fraud in Equity, A Study in English and Irish Law (Book Review)

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tween the insured and the insurance agent and other insurer's representatives that go under the name of waiver and estoppel.

While some criticism has been made<sup>2</sup> of the fact that the last portion of the book places undue emphasis on warranties, representations and concealment, the complexities occasioned by statutory change of common law in these areas make the coverage most interesting and valuable to the practicing insurance attorney and more than justify the space allotted. This reviewer is proud, therefore, to add his voice to the chorus of those who sing of the master.

EDWARD T. FAGAN.\*



FRAUD IN EQUITY, A STUDY IN ENGLISH AND IRISH LAW. By L. A. Sheridan. London: Sir Isaac Pitman & Sons, Ltd., 1957. Pp. XLIII, 235.

This handsomely bound and attractive book was originally submitted to the Queen's University of Belfast in 1953 as a thesis for the degree of Ph.D. Although that thesis has been somewhat abridged for purposes of publication, the book is nevertheless a complete and penetrating discussion of an extremely important fact of equity jurisprudence. The finished product is a monograph wherein the author has undertaken to re-examine, in a thorough and scholarly manner, the concept of fraud as it has developed in the Court of Chancery.

The scope and purpose of the work is set forth in an interesting nine-page "General Introduction" which commences with the following quotation from *Reddaway v. Benham*:<sup>1</sup>

. . . Fraud is infinite in variety; sometimes it is audacious and unblushing; sometimes it pays a sort of homage to virtue, and then it is modest and retiring; it would be honesty itself if it could only afford it. But fraud is fraud all the same; and it is the fraud, not the manner of it, which calls for the interposition of the Court.<sup>2</sup>

Soon thereafter the author bemoans the fact that the courts have not established a definition of fraud. He suggests that "leaving a definition general and flexible is one thing, and having no definition at all is quite another."<sup>3</sup> Surely, in these introductory pages, there is

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<sup>2</sup> *Id.* at 233.

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<sup>1</sup> [1896] A.C. 199, 221 (per Lord Macnaghten).

<sup>2</sup> P. 1.

<sup>3</sup> *Ibid.*

an implicit promise that the reader will emerge with an accurate and useful definition of fraud. Neither the courts<sup>4</sup> nor previous authors<sup>5</sup> have attempted to formulate such a definition. Since the comprehensive review of the subject, as envisaged by Professor Sheridan, could not be expected of a general work on equity, and since there is no book "concerned primarily with the meaning of fraud,"<sup>6</sup> he proceeds to examine this ancient head of equity jurisdiction.<sup>7</sup>

The examination commences, and is in part founded upon the now classical division of equitable fraud as enunciated by Lord Hardwicke, the Lord Chancellor, in the celebrated case of *Earl of Chesterfield v. Janssen*.<sup>8</sup> In what Pomeroy calls his "most instructive opinion,"<sup>9</sup> the Lord Chancellor, after affirming that the Court of Chancery had "undoubted jurisdiction to relieve against every species of fraud,"<sup>10</sup> enunciated his precedential classification. Professor Sheridan paraphrases the classification as follows:

"1. Actual fraud, arising from facts and circumstances of imposition.

"2. Fraud apparent from the intrinsic nature and subject of the bargain itself, the bargain being 'such as no man in his senses and not under delusion, would make on the one hand, and as no honest and fair man would accept on the other. . . .'

"3. Fraud presumed from the circumstances and condition of the parties contracting.

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<sup>4</sup> See, e.g., *Lawley v. Hooper*, 3 Atk. 278, 279, 26 Eng. Rep. 962, 963 (Ch. 1745). "The court very wisely hath never laid down any general rule beyond which it will not go, lest other means of avoiding the equity of the court should be found out. . . ." *Ibid.*

<sup>5</sup> See, e.g., 3 POMEROY, EQUITY JURISPRUDENCE §873 (5th ed. 1941). On page 1, note 6, Professor Sheridan quotes the following from Pomeroy's third edition: "It is utterly impossible to formulate any single statement which shall accurately define the equitable conception of fraud, and which shall contain all of the elements which enter into that conception; these elements are so various, so different under the different circumstances of equitable cognizance, so destitute of any common bond of unity, that they cannot be brought within any general formula. To attempt such a definition would therefore be not only useless, but actually misleading." This is the opening sentence of Section 873 of the fifth edition, entitled "Description—Essential Elements." Pomeroy not only "describes" fraud but devotes 206 pages to "Actual Fraud" and 259 pages to "Constructive Fraud."

<sup>6</sup> P. 4.

<sup>7</sup> Maitland states an "old rhyme" thus: "These three give place in a court of conscience, Fraud, accident, and breach of confidence." Quoted in CHAFEE, SIMPSON & MALONEY, CASES ON EQUITY 6 (3d ed. 1951). Professor Sheridan quotes a similar couplet ascribed to Sir Thomas More. P. 5.

<sup>8</sup> [1751] 2 Ves. Sen. 125, 28 Eng. Rep. 82 (Ch. 1750).

<sup>9</sup> 3 POMEROY, *op. cit. supra* note 5, §874 n.4.

<sup>10</sup> *Earl of Chesterfield v. Janssen*, [1751] 2 Ves. Sen. 125, 155, 28 Eng. Rep. 82, 100 (Ch. 1750).

"4. Fraud collected or inferred from the nature and circumstances of the transaction; the transaction being an imposition and deceit on persons not parties to the fraudulent agreement.

"5. Fraud which infects catching bargains with heirs, reversioners, or other expectants, in the life of the father or other person from whom the property is expected."<sup>11</sup>

Pursuant to the plan of the "General Introduction," the book is divided into four parts. Part I, entitled "Actual Fraud," covers Lord Hardwicke's first species, and in separate chapters deals with fraudulent misrepresentation, fraudulent dealing with property and fraud affecting legal proceedings.

Part II, entitled "Inequality of Parties and Unconscionable Bargains," is perhaps the most valuable segment of the book and is deserving of special praise. This part treats Lord Hardwicke's second, third and fifth species (sometimes collectively called "constructive fraud") in chapters consecutively entitled "Taking Advantage of Weakness and Necessity," "Undue Influence," "Breach of Fiduciary Duty and Fraud on a Power," "Unconscionable Bargains" and "Catching Bargains With Expectants." In these chapters Professor Sheridan demonstrates his analytical prowess, in the grouping and assortment of the various cases involving an inequitable "taking advantage" of another,<sup>12</sup> and also, his Irish wit and humour, in the interesting presentation of some of the cases.<sup>13</sup>

Part III departs from Lord Hardwicke's classification and is devoted to that ". . . equitable maxim of undeniable respectability that equity will not allow a statute to be used as an instrument of . . . fraud."<sup>14</sup> Although this part, which borrows the phraseology of the maxim for its title, has a definite relevance to the book, it is not likely to be of great value or interest to the American reader. Surely the discussion of the doctrine of part performance<sup>15</sup> is at best an introduction that invites further study.

Part IV, containing the concluding chapters that deal with the meaning, classification and distinguishing features of equitable fraud, is entitled "Definition of Fraud." In the light of the previous analysis of all of the materials treated, Professor Sheridan attempts a redefinition of fraud. In this respect, although the reader will be grateful for the clarity of exposition of the factors and elements that comprise

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<sup>11</sup> P. 7.

<sup>12</sup> The classifications include lunacy, mental weakness, drunkenness, dissoluteness, illness, illiteracy, ignorance of rights, humbleness of social station, poverty, age, financial distress and eccentricity. See also his chart on fraud on page 181 and his classification or outline on pages 182 and 183.

<sup>13</sup> See for example the presentation of *Say v. Barwick* [1 V. & B. 195, 35 Eng. Rep. 76 (Ch. 1812)] on page 79, wherein the reader is told how a "very astute intoxicator was deprived of the spoils of his activities. . . ."

<sup>14</sup> P. 146.

<sup>15</sup> P. 150.

"equitable fraud," he will wonder whether the redefinition is not really what Pomeroy termed "description."<sup>16</sup>

In the chapter on "Definition of Fraud,"<sup>17</sup> Professor Sheridan briefly reproduces the definitions given by moralists, sociologists, lawyers and the Oxford Dictionary. Commenting upon the definitions of the moralists he states: "Thus it will be observed from the writings of a selection of Catholic and Protestant ethicists and theologians that little guidance can be obtained in that quarter."<sup>18</sup> One must observe that the encyclopedic works examined scarcely comprise a representative selection. Furthermore, it is an unreasonable expectation to hope to find in such works a helpful and practical definition of "equitable fraud" as a concept of positive law. The difficulty of defining, and the supremacy of the individual facts of each case, is admirably illustrated in the preceding chapters. It is for this reason that Pomeroy refused to define and would merely say:

Every fraud, in its most general and fundamental conception, consists in obtaining an undue advantage by means of some act or omission which is unconscientious or a violation of good faith in the broad meaning given to the term by equity,—the *bona fides* of the Roman law.<sup>19</sup>

The observations of any reviewer, however seemingly harsh, cannot detract from the overall excellence of *Fraud in Equity* and its affirmative contribution to the literature of equity. Also, after a careful reading of the book, it does not seem to matter whether Professor Sheridan has fulfilled his promise to furnish a new, useful and complete definition of equitable fraud. He has, nonetheless, fully succeeded in presenting a clearer meaning and understanding of the concept of fraud as it has been applied in the Court of Chancery.

EDWARD D. RE.\*

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<sup>16</sup> Professor Sheridan's painstaking research and scholarship manifests itself throughout the book. With respect to Pomeroy's "description" of fraud, for example, after quoting the statement on page 202 of the book, Professor Sheridan observes: "No doubt the close measure of agreement with Marvin, P.J., in *Gale v. Gale* [19 Barb. 249, 251 (N.Y. Sup. Ct. 1855)] will be taken as an indication that somewhere there is an unacknowledged debt."

<sup>17</sup> P. 193.

<sup>18</sup> P. 197.

<sup>19</sup> 3 POMEROY, EQUITY JURISPRUDENCE § 873, at 421 (5th ed. 1941).

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