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Equity--Reformation of Deeds--Mutual Mistake of Fact (Alston v. Porter, 219 S.W.2d 445 (Tenn. 1949))

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question. Since the subject when hypnotized, is under the influence and will of another, he is not master of his own will and is subject to hallucinations which may be suggested by the hypnotist. The validity of such a confession is very questionable.

A confession, extorted from a prisoner in custody through force or fear, is invalid and must be rejected by the court.[14] This is also true where, as an inducement for obtaining a confession, the district attorney promises the accused freedom from prosecution.[15]

From the foregoing it can readily be seen that the initial problem is the determination of whether or not the confession is voluntary. Some states have adopted the rule that this question is to be decided by the trial judge, while the majority hold that it falls within the province of the jury. Since the issue is in reality a question of fact, it would appear that the majority view is the better one.

T. W. S.

EQUITY — REFORMATION OF DEEDS — MUTUAL MISTAKE OF FACT.—The plaintiffs' agents effected a contract of sale for the larger of two lots owned by the plaintiffs in Tennessee. The secretary of the plaintiffs' lawyer was instructed by the lawyer to make out the required deed. Through inadvertence she incorporated the description of both of the lots owned by the plaintiffs, whereas the contract concerned only the larger. The deed in this form was executed by the plaintiffs and delivered to the grantee who subsequently transferred the deed to the defendant herein. When the error was discovered the plaintiffs promptly instituted this suit praying for a decree divesting defendant of title to the lot erroneously conveyed and revesting title in the plaintiffs. The Chancellor granted the petition by way of reformation of the deed on the ground of mutual mistake of fact. *Held,* affirmed. One of the fountainheads of equitable jurisdiction is the reformation of instruments which have been erroneously constructed due to a mutual mistake as to some extrinsic fact. When there is a mistake of fact so fundamental that the minds of the parties have not met, or where unconscionable advantage has been gained through mistake, equity will act to protect legal rights and prevent intolerable injustice provided that the plaintiff has not been guilty either of gross negligence in effecting the mistake, or of sleeping on his rights, and provided that restitution to status quo is feasible without interference with intervening rights. *Alston v. Porter,* — Tenn. —, 219 S. W. 2d 445 (1949).

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[14] People v. Barbato, *supra* note 13.

[15] N. Y. CODE CRIM. PROC. § 395; People v. Reilly, 224 N. Y. 90, 120 N. E. 113 (1918).

In no jurisdiction is it seriously controverted that equity has power to reform instruments erroneously constructed due to mutual mistake of fact.[1] However, the power is exercised cautiously and each case is treated on its own particular facts, for a mistake of fact is more than a mere error of judgment. In order that equity will reform an instrument, there must have existed an antecedent agreement as to the terms of the instrument.[2] It must be remembered that equity does not create agreements for parties, but it will perfect an agreement which has been erroneously integrated into a written instrument.

If mistake is the only basis for the petition for equitable relief, then it must be shown that the mistake was mutual.[3] However, this dogma does not exclude cases such as the instant case wherein the mistake of fact is perpetrated by a scrivener, who represented the plaintiff. The majority view regards the mutual erroneous assumption of the parties that the instrument which embodies their agreement conforms to that agreement as a mutual mistake of fact.[4] The courts require clear and convincing proof of the existence of the material mistake in the instrument, and the petitioner bears a heavy burden of proof in this respect.[5] The plaintiffs here subscribed the deed, although on its face it conveyed both tracts of land. The weight of authority is to the effect that this mere omission to read the contents of an instrument which is the embodiment of a previous agreement, is no bar to equitable relief against the consequences of mutual mistake of fact; the omission does not constitute gross carelessness as a matter of law.[6]

The instant case falls well within the pattern established by a long line of decisions in that it recognizes mutual mistake of fact as a ground for the reformation of instruments. It is subject to criticism only because it does not sufficiently indicate the relationship of the defendant, as a third party, to the original parties to the mistake. The intervention of the rights of third parties often is of great import in reformation cases.[7] Parenthetically, the court also com-

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[1] 26 A. L. R. 472 (1923).

[2] Hunt v. Rousmaniere, 1 Pet. 1 (U. S. 1828); Fitch v. Flinn, 198 Iowa 823, 200 N. W. 402 (1924).

[3] Gibson v. Alford, 161 Ga. 672, 132 S. E. 442 (1926); Doniol v. Commercial Fire Insurance Co. of the City of New York, 34 N. J. Eq. 30 (1881). Relief has been afforded in cases where there is unilateral mistake of fact and fraud or unconscientious conduct. *See* White and Hamilton Lumber Co. v. Foster, 157 Ga. 493, 122 S. E. 29 (1924).

[4] MacDonald v. Crissey, 215 N. Y. 609, 109 N. E. 609 (1915); Born v. Schrenkeisen, 110 N. Y. 55, 17 N. E. 339 (1888).

[5] Gillespie v. Moon, 2 Johns. Ch. 595 (N. Y. 1817).

[6] Jamaica Savings Bank v. Taylor, 72 App. Div. 567, 76 N. Y. Supp. 790 (2d Dep't 1902); Albany City Savings Institution v. Burdick, 87 N. Y. 40 (1881).

[7] Campbell v. Lowe, 9 Md. 500 (1856); Shelly v. Ersh, 305 Ill. 126, 137 N. E. 106 (1922).

mits itself to the archaic distinction between mistake of fact and mistake of law, a dictum unhappily indicative of slavish adherence to precedent.[8]

P. F.

JURISDICTION—FEDERAL COURTS—DIVERSITY OF CITIZENSHIP —APPLICATION OF STATE LAW.—Plaintiff, a Tennessee corporation, sued for commissions allegedly due by reason of a sale of defendant's real estate located in Mississippi. Suit having been brought in the United States District Court for Mississippi on the grounds of diversity of citizenship, that court found the contract void under Mississippi law since plaintiff had failed to comply with a state statute[1] which required that foreign corporations doing business in that state file a written power of attorney designating an agent on whom service of process may be had. The United States Court of Appeals reversed, holding that the contract was not void but only unenforceable in Mississippi state courts, and the fact that the respondent could not sue in the state courts did not preclude its bringing the action in the federal court sitting in that state. The Court of Appeals relied on *David Lupton's Sons Co. v. Automobile Club of America,*[2] in which a similar prohibition against use of the courts of the State of New York[3] was held not to bar a non-complying corporation from bringing its suit in the federal court. "The State could not prescribe the qualifications of suitors in the courts of the United States, and could not deprive of their privileges those who were entitled under the Constitution and laws of the United States to resort to the Federal courts for the enforcement of a valid contract."[4] Because of the seeming conflict of that holding with the recent ruling of the United States Supreme Court in *Angel v. Bullington,*[5] a writ of certiorari was granted. *Held,* judgment reversed. For purposes of diversity jurisdiction a federal court is in effect only another court of the state in which it sits. The fact that

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[8] *See* Hunt v. Rousmaniere, supra note 2. For the more modern view concerning mistake of law, see N. Y. CIV. PRAC. ACT § 112f; Ryon v. Wanamaker, 116 Misc. 91, 190 N. Y. Supp. 250 (Sup. Ct. 1921), *aff'd,* 202 App. Div. 848, 194 N. Y. Supp. 977 (2d Dep't 1922), *aff'd,* 235 N. Y. 545, 139 N. E. 728 (1923).

[1] MISS. CODE ANN. § 5319 (1942), which also provides, ". . . any foreign corporation failing to comply with the above provisions shall not be permitted to bring or maintain any action or suit in any of the courts of this state."

[2] 225 U. S. 489 (1912).

[3] N. Y. GEN. CORP. LAW § 218.

[4] David Lupton's Sons Co. v. Automobile Club of America, 225 U. S. 489, 500 (1912).

[5] 330 U. S. 183 (1947). For an interesting discussion of this case see Note, 21 ST. JOHN'S L. REV. 184 (1947).