

# Judgment--Domestic Relations--Collateral Attack (Arcuri v. Arcuri, 265 N.Y. 358 (1934))

St. John's Law Review

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

---

### Recommended Citation

St. John's Law Review (1935) "Judgment--Domestic Relations--Collateral Attack (Arcuri v. Arcuri, 265 N.Y. 358 (1934))," *St. John's Law Review*: Vol. 9 : No. 2 , Article 16.

Available at: <https://scholarship.law.stjohns.edu/lawreview/vol9/iss2/16>

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact [lasalar@stjohns.edu](mailto:lasalar@stjohns.edu).

JUDGMENT — DOMESTIC RELATIONS — COLLATERAL ATTACK. — This is an action to obtain a decree to the effect that defendant does not have any interest in a mortgage held in the name of plaintiff's intestate and the defendant or their survivor. It is alleged that the defendant induced plaintiff's intestate to take an assignment of this mortgage in their joint names by falsely representing herself to be his lawful wife when in fact she had another husband living and undivorced, she having obtained a decree under Section 7A of the Domestic Relations Law<sup>1</sup> from her prior husband by false testimony. The question presented is whether the decree referred to could be attacked collaterally in this proceeding. *Held*, where the court had proper jurisdiction and the only grounds for the collateral attack was the alleged perjury of the defendant, the judgment of dissolution of the defendant's prior marriage can not be attacked collaterally. *Arcuri v. Arcuri*, 265 N. Y. 358, 193 N. E. 174 (1934).

In the interests of public policy, a limitation<sup>2</sup> is placed on a collateral attack upon a judgment.<sup>3</sup> In general, the grounds on which a judgment may be thus assailed are fraud and want of jurisdiction.<sup>4</sup> The fraud which will permit one court in a collateral proceeding to review the judgment of another tribunal is fraud practiced in the procurement of the judgment, by which one party was prevented from availing himself of some evidence.<sup>5</sup> However, the authorities are in accord that perjury is *not* such fraud as will permit a collateral attack on a judgment where the court rendering such judgment had proper jurisdiction.<sup>6</sup> This represents the New York law,<sup>7</sup>

<sup>1</sup> CONS. LAWS, c. 14.

<sup>2</sup> The limitation is designed to prevent repeated litigation between the same parties in regard to the same subject of controversy, and finds its expression in the maxim: "*Interest rei publicae, ut sic finis litium; nemo debet bis vexari pro una et eadem causa.*" *United States v. Throckmorton*, 98 U. S. 61 (1878).

<sup>3</sup> *Aparicio v. New England Equitable Ins. Co.*, 177 App. Div. 551, 164 N. Y. Supp. 114 (1st Dept. 1917), *aff'd*, 221 N. Y. 69, 117 N. E. 1060 (1917); *New York Central R. R. Co. v. Harrold*, 65 How. Pr. 89 (N. Y. 1883).

<sup>4</sup> *Kinnier v. Kinnier*, 45 N. Y. 535, 542 (1871): "It is a rule well settled, that every judgment may be impeached for fraud, and this applies as well to judgments of our own State, as to those of other States or foreign judgments; but what will constitute fraud sufficient to vitiate a judgment, and who can make the objection, and under what circumstances it can be interposed, are material questions." *Ruger v. Heckel*, 85 N. Y. 483 (1881).

<sup>5</sup> *Kinnier v. Kinnier*, *supra* note 4, at 542, 543; *Mayor, et al., of the City of New York v. Brady*, 115 N. Y. 599, 22 N. E. 237 (1889). *STORY, EQUITY JURISPRUDENCE* §1575, states: "It seems to be conclusively settled that a judgment can only be impeached in a court of equity for fraud in its concoction. If, then, the judgment of a court of competent jurisdiction can only be enjoined in a court of equity upon the ground of fraud, this fraud must have been practiced in the very act of obtaining the judgment, or else it will be concluded by the judgment at law where there is equally a defense as in equity."

<sup>6</sup> *United States v. Throckmorton*, *supra* note 2, 98 U. S. at 66, whereat the Supreme Court unanimously agreed that "the doctrine is \* \* \* well settled that the court will not set aside a judgment because it was founded on a fraudulent instrument or perjured evidence, or for any matter which was actually presented or considered in the judgment assailed."

<sup>7</sup> *Ross v. Wood*, 70 N. Y. 48 (1877); *Gitler v. Russian Co.*, 124 App. Div.

supported by early authorities,<sup>8</sup> and other jurisdictions<sup>9</sup> in well-nigh unanimous array.<sup>10</sup> Recent decisions<sup>11</sup> reaffirm the rule so ably stated by the Lord Keeper in the time-honored case of *Tovey v. Young*, decided in 1702.<sup>12</sup>

Further, where the court once acquires competent jurisdiction over the parties<sup>13</sup> or the subject matter,<sup>14</sup> and there is no fraud in the procurement of the judgment, no collateral attack is allowed. This rule is likewise founded on early authorities,<sup>15</sup> and has been followed consistently in New York,<sup>16</sup> as well as in other states.<sup>17</sup> The doctrine of respecting judgments of other courts jurisdictionally competent has been approved innumerable times by the United States Supreme Court,<sup>18</sup> which even extends the rule so as to include foreign judgments.<sup>19</sup>

---

273, 274, 108 N. Y. Supp. 793, 793 (1st Dept. 1908), wherein the court said: "While equity will sometimes intervene to set aside a judgment obtained by fraud or unfair practices, it will not do so where the only fraud alleged is that it was procured by perjured testimony." Therein it was charged that the plaintiff who was called and sworn as a witness upon the inquest, testified falsely respecting the value of the goods which were the subject of the action. A demurrer to the defense was sustained.

<sup>8</sup> *Michigan v. Phoenix Bank*, 33 N. Y. 9 (1865); *Patch v. Ward*, L. R. 3 Ch. App. 203; *Dobson v. Pearce*, 2 Kern 156; STORY, EQUITY JURISPRUDENCE §§1581 *et seq.*

<sup>9</sup> *Greene v. Greene*, 2 Gray (Mass.) 361, 362, wherein Chief Justice Shaw said: "But where the same matter has been actually tried, or so in issue that it might have been tried, it is not again admissible; the party is estopped to set up such fraud, because the judgment is the highest evidence, and cannot be contradicted."

<sup>10</sup> *Contra*: see WELLS, RES ADJUDICATA §499: "There is an old case in South Carolina to the effect that fraud in obtaining a bill of sale would justify equitable interference as to the judgment obtained thereon. But I judge it stands alone or quite alone, and has no weight as a precedent."

<sup>11</sup> *Crouse v. McVickar*, 207 N. Y. 213, 100 N. E. 697 (1912).

<sup>12</sup> The rule is of ancient vintage, it having been well said by the High Court of Chancery, Pr. Ch. 193, that "New matter may in some cases be ground for relief, but it must not be what was tried before; nor, when it consists in swearing only, will I ever grant a new trial, unless it appears by deeds, or writing, or that a witness on whose testimony the verdict was given was convicted of perjury, or the jury attainted." This decision was followed in New York in the early case of *Smith v. Lowry*, 1 Johns. Ch. 320 (N. Y. 1814).

<sup>13</sup> *Rupp v. Rupp*, 156 App. Div. 389, 141 N. Y. Supp. 484 (2d Dept. 1913).

<sup>14</sup> *Garfein v. McInnes*, 248 N. Y. 261, 162 N. E. 73 (1928).

<sup>15</sup> *Bateman v. Willoe*, 1 Scho. 8 Lef. 201, where Lord Redesdale said: "I do not know that equity ever does interfere to grant a new trial of a matter which has already been discussed in a court of law, a matter capable of being discussed there, and over which the court of law had full jurisdiction."

<sup>16</sup> *Sleicher v. Sleicher*, 251 N. Y. 366, 167 N. E. 501 (1930); *Sorenson v. Sorenson*, 219 App. Div. 344, 220 N. Y. Supp. 242 (2d Dept. 1927).

<sup>17</sup> *Borland v. Thornton*, 12 Cal. 440 (1859); *Riddle v. Baker*, 13 Cal. 295 (1859); *Dixon v. Graham*, 16 Iowa 310 (1864); *Cottle v. Cole & Cole*, 20 Iowa 481 (1866).

<sup>18</sup> UNITED STATES CONST. Art. IV, §1; *Atherton v. Atherton*, 181 U. S. 155, 21 Sup. Ct. 544 (1901); *Harding v. Harding*, 198 U. S. 317, 25 Sup. Ct. 679 (1905); *Haddock v. Haddock*, 201 U. S. 562, 26 Sup. Ct. 525 (1906).

<sup>19</sup> *Supra* note 18; *Cheely v. Clayton*, 110 U. S. 701, 4 Sup. Ct. 328 (1884);

To permit collateral attacks on judgments on grounds other than fraud in the procurement or want of jurisdiction<sup>20</sup> would leave a court without capacity to settle definitely any suit brought before it, and would render judgments insecure and uncertain. New evidence, confessions of perjurers, mistaken testimony, etc., if permitted to overthrow a judgment once competently made, would keep lawsuits alive *ad infinitum*.<sup>21</sup>

J. E. F.

LANDLORD AND TENANT—BANKRUPTCY AS CONDITION SUBSEQUENT OR CONDITIONAL LIMITATION.—Defendant, assignee of a lease, was adjudicated bankrupt. Said lease contained a clause "that an adjudication that the lessee is bankrupt shall *ipso facto* end and terminate this lease and any rights thereunder." It was further provided that the "lessor at its option may rescind and terminate this agreement upon \* \* \* the breach of any of its conditions, or any of the covenants or agreements of said lessee." This suit is brought for rents accruing between the adjudication of bankruptcy and the disaffirmance of the lease by the receiver. *Held*, the provision for a termination of the lease upon the adjudication of bankruptcy constituted a conditional limitation terminating the lease and all obligations thereunder upon its happening. *Murray Realty Co. v. Regal Shoe Co.*, 265 N. Y. 332, 193 N. E. 164 (1934).

Parties to a lease may create a conditional limitation by providing for the termination of the leasehold estate upon an adjudication of bankruptcy of the lessee.<sup>1</sup> To effect such result, it is requisite

---

Roach v. Garvan, 1 Ves. Sen. 157; Harvey v. Farnie, 8 App. Cas. 43. In Cottington's Case, 2 Swanston 326 (1678), Lord Chancellor Nottingham in the House of Lords said: "It is against the law of nations not to give credit to the judgments and sentences of foreign countries, till they be reversed by the law, and according to the form, of those countries wherein they were given. For what right hath one kingdom to reverse the judgment of another? And how can we refuse to let a sentence take place till it be reversed? And what confusion would follow in Christendom, if they should serve us so abroad, and give no credit to our sentences." The New York cases are in accord. *Guggenheim v. Wahl*, 203 N. Y. 390, 96 N. E. 726 (1911).

<sup>20</sup> *Supra* note 4.

<sup>21</sup> Dickens, in *Bleak House*, writes of the case of "Jarndyce v. Jarndyce," which was litigated for four generations over a period of eighty years. Might not any case in the courts today equal, if not surpass, Dickens' case in longevity, in the event that the rule for attacking judgments collaterally were extended?

<sup>1</sup> *Jane v. Paddell*, 67 Misc. 420, 122 N. Y. Supp. 760 (1910); *Lichtenstein v. Groton Laundry Service*, 123 Misc. 942, 206 N. Y. Supp. 579 (1924); *In re Outfitters' Operating Realty Co.*, 69 F. (2d) 90 (C. C. A. 2d, 1934).