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Restitution: Final Examination (August 1958)

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I.

You are attorney for a pipe line company. The head of the Engineering Department comes to you requesting advice on the following problem:

Your Company (A) has facilities adjacent to B, refinery. In 1930, B used a certain 6" line (1) built by B, leading to A's property, to store his gasoline on A's facilities.

In 1943, A, undergoing a program of expansion, built many large storage tanks and installed a 6" pipe line (2) -- the line ultimately in question -- to B's property.

In 1950, A installed 8" and 12" lines and discontinued use of (2). Upon A's discontinuance of the use of (2), B connected to (2), blank-flanged it, and commenced using it for its own purposes. A was not informed of this action.

In 1957, B's Refinery Manager claimed ownership of (2).

A check of A's land records discloses that A has valid existing easements on the land wherein (2) lies (twenty-four inches under the surface), and that the line has been assessed as personal property for tax purposes (and taxes paid thereon by A) since 1945.

A further check of the records discloses that B executed to A easements for such portion of B's land in which (2) lies in 1945 and 1950, and that A has paid B for such easements.

Because of the time element, you check all applicable statutes of limitation and find the following:

- a) Trespass to real property - 2 years
- b) Injuries to, or specific recovery of, personal property - 2 years
- c) Written contracts - 5 years
- d) oral contracts - 3 years

The Chief Engineer wants you to "do something." What legal action, if any, can you take? Why?

II.

The U. S. Commissioner of Internal Revenue assessed income taxes against X bank upon its earnings which X had been paying out to former depositors under a reorganization agreement made after X had closed and upon claims which the former depositors had upon such earnings.

X claimed that such earnings were exempt from income tax under the applicable provision of the Internal Revenue Code which provides:

"Whenever any bank . . . a substantial portion of the business of which consists of receiving deposits and making loans and discounts, has been released . . . from . . . liability to its depositors for any part of their claims against it, and such depositors have accepted, in lieu thereof, a lien upon subsequent earnings of such bank . . . , or claims against assets segregated by such bank . . . or assets transferred from it to an individual or corporate trustee, no tax shall be assessed or collected . . . on account of such bank . . ."

The reorganization agreement provided that as among the bank, its stockholders, and old depositors, signatories thereto: (1) The bank would reopen upon receipt of new capitalization, (2) old depositors would waive 75% of their deposits, relinquishing same to X upon the express condition that said 75% should be repaid to the depositors before the stockholders were paid from stock dividends, but that said 75% should not be a charge on X nor a liability on X, being repayable only when and if dividends were declared.

The Tax Court sustained the assessment made by the Commissioner, holding that the agreement gave the depositors no claim on the subsequent earnings of X within the meaning of the quoted section of the Internal Revenue Code. You are attorney for X. What theory will you use in prosecuting your appeal? Why?

III.

P, a general contractor, made an agreement with D to repair a business building. P did the work and filed a material and labor lien on the premises, \$1800.00, which he now seeks to foreclose.

D denies liability for the amount claimed alleging that during the course of the work, the building caught fire due to P's negligence, and D cross-claims for \$4,000.

P replied, alleging D had ratified P's acts in repairing the fire damage.

Upon trial without a jury, the evidence showed: The testimony concerning P's negligence was conflicting; P proved the reasonable cost of material and labor to repair the fire damage was \$900; D was overseas when the fire occurred and had left no one in charge of the building; the fire destroyed a part of the building leaving the rest exposed to damage by the elements; and that there was no express contract to make the repairs.

✓ The lien statute provides that the liens in question arise from oral or written contract and apply to the whole of the building in question.

The Court found the issues to be in P's favor and rendered judgment for \$1800, that the liens be foreclosed. D appeals. What result? Why?

IV.

A taxi belonging to D Cab Co., ran into and injured a car driven by X. In X's car was riding his wife and three of her friends. The wife was injured as were her friends and proceeded to sue D for damages. X joined in the suit claiming loss of consortium, medical expenses for his wife, and damages to his car.

D pled contributory negligence on the part of X and cross-claimed for damages to the cab and contribution for any sums recovered by the other plaintiffs.

The jury found the accident to have been caused by concurrent negligence, resulting in judgments for all plaintiffs, but X. In addition a declaratory judgment was entered allowing D contribution against X on the judgments, except for X's wife. D appeals alleging the wife to be unjustly "enriched." What result? Why?

V.

P, wishing to sell his farm in 1944, listed it with a real estate agent whom he furnished data of the kind and amount of crops there raised as follows: (1) "now offered \$3500 for plums and nectarines; (2) 1943 olives and figs sold for \$1,100; there were also 600 tons of grapes and 700 boxes of field oranges."

P's son who assisted in the subsequent sale said the 1944 grape crop would yield 540 tons and bring \$45,000.

All of the foregoing data was used in making the ultimate sale to D in consideration for notes, crop and real estate mortgages. D paid several installments on the notes, then defaulted on the balance.

P now sues to foreclose the crop mortgages. D counterclaims for damages.

At trial, P failed to produce the person who allegedly offered \$3500 for the plums and nectarines, and it appeared that D sold this crop for \$60.00. The evidence also showed that the 1943 olives and figs brought \$622.00 and that only 252 tons of grapes and 145 boxes of oranges were produced in 1943; that the 1944 grape crop was less than one-third of the tonnage represented; and that it yielded a net return of less than one-fourth the stated value.

It further appeared that the purchaser who said he relied on the above representations in closing the sale was experienced in the farming of grains, but not in fruit crops. This purchaser did visit the farm several times, however, and inspected the growing fruit in the spring of 1944. It further appeared that after Defendant purchaser learned of the low yield, he continued to pay on the notes, sought an extension of the notes, and sought and received P's advice and assistance in running the farm.

The jury returned a verdict for Defendant purchaser on the cross-claim for damages, and P appeals. What result? Why?

VI.

P, uneducated, purchased X tract of land from Y County at a resale of tax lands. At the suggestion of Y, X had the tract surveyed. The survey as made was inaccurate inasmuch as it included 30 acres of land not in X tract. P proceeded to subdivide the tract, on the basis of the survey, into building lots and thereafter conveyed some of the lots by general warranty deed, thus disposing of some of the extra 30 acres.

Subsequently, P called on D, a tax collector, justice of the peace, and general "country squire", who was engaged in the practice of drawing wills, deeds, and preparing income taxes for fees in addition to his other endeavors though he was not an attorney. P asked D to prepare a deed of one of the subdivided lots to A. D checked the description and concluded the lot was not part of X, so informed P and, at the time, did not prepare the deed. Later, however, D did prepare four deeds for P conveying the 30 acres in lots to which P did not have title. Later P brought to D a petition to Y to validate P's title. The error in the survey was here repeated. It was not then validated because of a number of errors, and D informed P that the extra 30 acres was then being advertised for sale by Y. Still later D validated said petition, neglecting to tell P that he, D, had purchased the 30 acres from Y as agent for his sister.

P sued D, in equity, to compel D to convey the 30 acres to P. The trial court dismissed the bill. You, as attorney for P, appeal. Upon what theory do you base your appeal? Why?

VII.

D owned in fee five acres of land (X) on which were buildings and two mineral springs (A and B) to each of which machinery was attached. D sold X for \$15,000 to P, falsely representing A and B to be natural mineral waters that were bottled and sold as they came from the ground; that the daily flow from A was 1200 gallons along with 3000 gallons from B.

P entered into possession of X, installed modern machinery for bottling operations, and shortly thereafter discovered the water to be fresh, and the flow not to exceed 600 gallons. Nonetheless, P remained in possession and bottled the water for a period of eight months until the bottling works was destroyed by fire. Thereafter and prior to suit, P remained in possession and made some expenditures toward repairing a truck used in the business. After commencing this action -- for rescission -- P continued to possess the property, and spent additional sums on the truck.

After trial, the Court returned P's purchase price and awarded damages to P which included general expenses in the operation and installation of machinery, cost of new machinery, and for labor paid. D appeals. What result? Why?

VIII.

A owned contract interests in tract X. B and F owned similar interests in tract Y. A's husband, Z, a real estate broker, advertised X for sale in behalf of A. After some negotiations, Z, acting for A who was undisclosed, and B agreed to exchange properties so that B and F would own X and A would own Y. X was valued at \$6000 and Y at \$8000 for the purpose of the exchange.

Z, in the absence of B and F, drafted the exchange instrument in which it was agreed that B would raise the money necessary to complete the transaction by securing a loan on X, and convey to A and Z. Z arranged for the loan from C bank and B executed a mortgage to C. Z also had B execute an undated deed conveying Y to A and Z. F witnessed this deed. A never executed a deed to X, but Z obtained a deed conveying X from A's grantor, G, to B and delivered this deed to C. Later Z, learning that Y was held in joint tenancy by B and her husband, F, secured an additional deed to Y signed by B and F. This deed ran also to Z and A.

B and F subsequently moved onto X, made it their home, improved the property, paid taxes on it, and made regular payments of principal and interest on the mortgage.

Two years later B died and F went to C to inform C that he was the surviving tenant and entitled to the whole of X. C informed F that the property was in B's name only. F was appointed administrator of B's estate, and claimed to be the sole heir at law. Then D appeared, claiming to be B's son. F resigned as administrator, was successful in striking X from the inventory of B's estate, and now hires you as attorney to protect his interests in X. What type of action should you bring? What result should you obtain? Why?

IX.

D, owner of realty, agreed to sell a portion thereof to P. The only writing concerning this transaction read as follows:

"2/25/46. Received of P deposit of \$300.00 on the
X property, in Nowhere, State of Woodbridge. Bal.
Due \$7200 on closing date.

/s/ D"

Prior to the above transaction, D had leased the X property to C. The lease was recorded and gave C the option to purchase X for \$6500 at any time prior to the expiration of the lease on 8/10/48.

On 5/4/46 P advised D that he was willing to complete the purchase and asked that a deed be submitted for inspection. On 5/10/46, P made formal tender of the \$7200.00 balance, and at this time learned that C had exercised the option to purchase and had received a deed to X on 4/24/46 from D.

P now sues D for \$300.00 and damages for failure to convey. At the trial the evidence was conflicting as to whether or not P had notice of the C lease and as to whether or not P had ever discussed the lease with C. The case was tried to the Court without the aid of a jury, and judgment was rendered for D on all issues. P appeals. What result? Why?

X.

D is the son of P's intestate, I. I had delivered to P a deed, the only consideration for which was an agreement contained therein that D would comfortably and properly support and maintain I upon the premises conveyed in the deed during his natural life, pay the taxes, maintain and repair the premises, pay interest on a mortgage on the premises, and pay the water bills. I reserved to his own use all personal books, silverware, musical instruments and linen that were on the premises and included in the conveyance.

In seeking cancellation of the deed, P filed a petition alleging that I was addicted to liquor and drugs, was weak in body and mind, and incapable of attending to his business affairs; that D was I's confidential manager and advisor and took advantage of the relationship and I's condition and unduly influenced him to execute and deliver the deed in question. All of this D denied.

Upon the trial D requested the instruction that no legal obligation, independent of contract, rested upon D to do any of the things required of him by the recitals in the deed, and that the mere fact that D required a conveyance from his father to do such things furnished no basis for setting aside the conveyance on

grounds of undue influence; that no question of a gift was involved. The Court refused this instruction, but did instruct the jury that the deed was valid on its face; and, further, that where a relation of special trust and confidence is established, the burden of proof shifts -- that plaintiff bears the burden of proof in regard to mental capacity but that when it clearly appears that the father reposed special confidence in his son and deferred to his advice in the management of his personal business, the burden is then on the defendant to show that the conveyance was free and voluntary.

The jury found that I was competent to make the conveyance, but that D secured same by such coercion ~~or~~ importunity ~~as~~ to overcome I's free agency.

D appeals. What result? Why?