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Contracts-Insanity as Affecting Validity of Agreements

CONTRACTS—INSANITY AS AFFECTING VALIDITY OF AGREEMENTS.—In a recent case a father transferred $9,000 worth of bonds to his son in pursuance to an agreement that the latter care for him the remainder of his life. Several months later, after the father's death, the administrators of the estate brought an action against the son for replevin of the bonds, claiming that the father had been incapable of managing his own affairs, that the son had knowledge of this fact, and that a guardian had been appointed for the father a few months after the transfer. No allegation as to fraud or undue influence was made. The son showed that there had been an attempted distribution of the bonds but that this had failed, and that a short time thereafter the father came to live with him; and that he then took the bonds as consideration for his promise to keep the parent the remainder of his natural life. The Appellate Court of Indiana affirmed a decision for the administrators upon the ground that "where an unconscionable advantage is taken of persons of unsound mind before they have been placed under guardianship, by one possessing knowledge of such condition, the contract attempted to be entered into is absolutely invalid, void, and of no force or effect."[1]

The Indiana courts have followed the majority rule of this country by holding that a contract entered into by an insane person before an adjudication of insanity or before the appointment of a guardian is merely voidable.[2]

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[20] As in Buenner Chair Co. v. Feulner (1901), 28 Ind. App. 479, 63 N. E. 239, the owner of a factory probably found it to be more economical to leave his machinery unguarded even if it necessitated being subjected to an occasional fine. However, the court by holding him liable to an employee injured by the unguarded machinery, perhaps changed his mind.

[1] Warner v. Warner (1937), 10 N. E. (2d) 773.

[2] Crouse v. Holman (1862), 19 Ind. 30; Somers v. Pumphrey (1865), 24 Ind. 231; Devin v. Scott (1870), 34 Ind. 67; Musselman v. Cravens (1874), 47 Ind. 1; Nichol v. Thomas (1876), 53 Ind. 42; Freed v. Brown (1876), 55 Ind. 310; Wray v. Chandler (1878), 64 Ind. 146; Hardenbrook v. Sherwood, Guard. (1880), 72 Ind. 403; McClain v. Davis (1881), 77 Ind. 419; Schuff v. Ransom (1881), 79 Ind. 458; Fay v. Burdett (1882), 81 Ind. 433, 42 Am. Rep. 142; Copenrath v. Kienby (1882), 83 Ind. 18; Fulwider v. Ingels, Guard. (1882), 87 Ind. 414; North-Western Mutual Fire Ins. Co. v. Blankenship (1883), 94 Ind. 535, 48 Am. Rep. 185; Physio-Medical College of Indiana v. Wilkinson (1886), 108 Ind. 314, 9 N. E. 167; Bayer v. Berrymanj (1889), 123 Ind. 451, 24 N. E. 249; Ashmead v. Reynolds (1890), 127 Ind. 441, 26 N. E. 80; Louisville, etc. Railway Co. v. Herr (1893), 135 Ind. 591, 35 N. E. 556; McMillan v. Deering & Co. (1894), 139 Ind. 70, 38 N. E. 398; Gellenwaters v. Campbell (1895), 142 Ind. 529, 41 N. E. 1041; Teegarden et ux v.

Conversely, a contract made after a judicial declaration of insanity or the appointment of a guardian is absolutely void.[3]

Hence, since a contract made previous to judicial declaration of insanity is merely voidable, as a condition precedent to setting the contract aside there must be a return of the consideration received—a restoration of the other party to his *status quo*—before the insane person will be permitted to disaffirm his contract.[4] However, if the other party cannot be restored to his *status quo* relief is refused, not so much that the agreement possesses the legal essential of consent as because by means of an apparent contract, the insane party has secured an advantage or benefit which would be inequitable for him or those in privity with him to retain.[5]

Undoubtedly, to hold that all such agreements entered into by an insane party are void (a position taken by a few of the states) would lead to consistency;[6] yet, any inconveniences or hardships can be averted by the swift formal inquisition of lunacy.[7] Judicial action constitutes conclusive evidence that a person is incapable of contracting,[8] but until such time the presumption of competency continues.[9] The presumption of competency is not negated by reasonable knowledge of the disability of the insane party in absence of judicial declaration. The requisite of either judicial finding of insanity or appointment of a guardian is paramount even to actual knowledge of the condition of the incompetent party and contracts made under such circumstances are still held to be but voidable.[10] Thus, a holding that a contract is

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Lewis, Admin. (1895), 145 Ind. 98, 40 N. E. 1047, 44 N. E. 9; Thrash v. Starbuck (1896), 145 Ind. 673, 44 N. E. 543; Aetna Life Ins. Co. v. Sellers (1899), 154 Ind. 370, 56 N. E. 97, 77 Am. St. 481; Downham v. Holloway (1902), 158 Ind. 626, 64 N. E. 82, 92 Am. St. 330; Haskell v. Barker Car Co. (1909), 71 Ind. App. 69, 123 N. E. 818; Gwinn v. Hobbs (1913), 72 Ind. App. 439, 118 N. E. 155.

[3] Ibid. n. 2.

[4] Nichol v. Thomas (1876), 53 Ind. 42; Schuff v. Ransom (1881), 79 Ind. 458; Fay v. Burdett (1882), 81 Ind. 433, 42 Am. Rep. 142; Hull v. Louth (1887), 109 Ind. 315, 10 N. E. 270, 58 Am. Rep. 405; Ashmead v. Reynolds (1890), 127 Ind. 441, 26 N. E. 80; Louisville, etc. Railway Co. v. Herr (1893), 135 Ind. 591, 35 N. E. 556; Aetna Life Ins. Co. v. Sellers (1899), 154 Ind. 370, 56 N. E. 97, 77 Am. St. 481; Downham v. Holloway (1902), 158 Ind. 626, 64 N. E. 82, 92 Am. St. 330; Barkley v. Barkley (1914), 182 Ind. 322, 106 N. E. 609, L. R. A. 1915B, 678; Voris v. Harshbarger (1895), 11 Ind. App. 555, 39 N. E. 521; Gwinn v. Hobbs (1913), 72 Ind. App. 439, 118 N. E. 155.

[5] 46 A. L. R. 422.

[6] 32 Columbia Law Review 512.

[7] 46 A. L. R. 423.

[8] Nichol v. Thomas (1876), 53 Ind. 42.

[9] Folz v. Wert (1885), 103 Ind. 404, 2 N. E. 950.

[10] Nichol v. Thomas (1876), 53 Ind. 42. (Insane person made deed out to grantor who knew of the incapacity of his grantor. The contract was held to be voidable and could only be disaffirmed upon restoration of the grantee to his status quo.) Schuff v. Ransom (1881), 79 Ind. 458. (Son knew his father was of unsound mind, and gave him nothing in exchange of his father's contract to release him from a prior transaction. Later the son promised to reserve to the father a certain house. Since no disaffirmance of the voidable contract was shown, the court held the transaction to be binding.) Ashmead

void because an "unconscionable advantage" has been secured by one who is supposed to know of the disability inserts a new element in the law which is unsupportable by our past Indiana precedents.[11]

Modifications of the seeming harshness in requiring court action to protect an insane person are to be noted in several situations. One, where a lunatic has not received the benefit of the consideration of his contract.[12] Here, the father received care and kindness from his son; thus the contract cannot be set aside under this exception. Too, where the contract is still executory the agreement will not be enforced since no consideration has passed.[13] Here, there has been an actual exchange of consideration by each party.

In conclusion, the phrase "the shield should not be turned into a sword" should apply in these cases. It should be the duty of friends or relatives of an insane person to have a guardian appointed or a judicial finding of insanity rendered, and for failure to have either of these done the burdens should rest with them. W. E. O.

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v. Reynolds (1890), 127 Ind. 441, 26 N. E. 80. (By "undue persuasion, corrupt and overpowering influence" appellant nephew, knowing of the enfeebled condition of his uncle's mind, procured an agreement giving the nephew land worth $9,000, for which the nephew gave no consideration. No guardian had been appointed. The court held for the nephew, saying that knowledge of the appellee's (the uncle) condition did not render disaffirmance unnecessary.) Aetna Life Insurance Co. v. Sellers (1899), 154 Ind. 370, 56 N. E. 97, 77 Am. St. 481. ("Whether the beneficiary was ignorant of the grantor's infirmity or whether he obtained the benefits by means of knowledge of the disability, until disaffirmed, such contract passes a right or title as fully as an unimpeached contract.") Louisville, etc. Railway Co. v. Herr (1893), 135 Ind. 591, 35 N. E. 556. (R. R. Co. secured release from all claims for injuries caused by its train, for $500 cash and a year's pass. Later the injured party sued and got judgment for $7,000 for personal injuries. Held: in spite of knowledge by the railroad of the fact that the other party was non compos mentis, a voidable contract existed, and until disaffirmance and restoration to status quo, such was binding.)

[11] Ibid n. 10.

[12] North-Western Mutual Fire Insurance Co. v. Blankenship (1884), 94 Ind. 535, 48 Am. Rep. 185; Physio-Medical College v. Wilkinson (1886), 108 Ind. 314, 9 N. E. 167; Hull v. Louth (1887), 109 Ind. 315, 10 N. E. 270, 58 Am. Rep. 405.

[13] Wells v. Wells (1926), 197 Ind. 236, 150 N. E. 361.