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Jonesco v Beard: HL 1930

References: [1930] AC 298

Coram: Lord Buckmaster

Ratio: The plaintiff was a race horse trainer. He had made two claims against the defendant owner alleging first that the defendant had agreed to give him a share in some horses and second that the plaintiff had sold two horses to him but not been paid for them. The trial judge disbelieved the plaintiff and found for the defendant owner. The plaintiff appealed and was given leave to adduce fresh evidence which alleged fraud against the defendant as regards documents relied upon by him to defeat the second claim. The Court of Appeal had decided that a prima facie case of fraud had been made out and set aside the judgment and ordered a retrial. The defendant appealed.

Held: The correct way to challenge an existing decision of the Court on the basis of fraud was by a new substantive action. The defendant should not lose his favourable judgment without clear evidence of fraud. He should not lose it merely on account of a plausible allegation of fraud. The interest in finality of litigation should hold sway unless and until the judgment is shown to have been obtained by fraud. The fraud was not conceded and the evidence was far from incontrovertible.

Lord Buckmaster said: 'The fraud charged related to the claim for the price of the two horses alleged to have been sold by the appellant. Were such fraud properly established I agree with the Court of Appeal in holding that the whole judgment would thereby have been vitiated. Fraud is an insidious disease, and if clearly proved to have been used so that it might deceive the court, it spreads and infects the whole body of the judgment. Fraud is an insidious disease and if clearly proved to have been used so that it might deceive the court, it spreads to and infects the whole body of the judgment.'

and

‘The particulars of the fraud must be exactly given and the allegation established by the strict proof such a charge requires.’ and

‘It has long been the settled practice of the Court that the proper method of impeaching a completed judgment on the ground of fraud is by action in which, as in any other action based on fraud, the particulars of the fraud must be given and that allegation established by the strict proof such a charge requires . . . If however for any special reason departure from the established practice is permitted, the necessity for stating the particulars of the fraud and the burden of proof are no whit abated and all the strict rules of evidence apply. The affidavits used must, therefore, be examined as on final trial; every particle of hearsay evidence and reference to documents, not produced, must be excluded, and it must be kept constantly in mind that the rules which permit, on interlocutory proceedings, hearsay evidence, where the exact source of the information is afforded, have no more application than they would possess were the deponent a witness in the box speaking at the trial.’ ‘

Jurisdiction: England and Wales

This case cites:

- Cited – **Flower v Lloyd** CA ([1877] 6 ChD 297)
The plaintiffs tried to restrain the defendant from infringing their patent. They succeeded at first instance but the order was overturned on appeal. An expert went to inspect the process at the defendant’s works. Later, employees gave affidavits . .

(This list may be incomplete)

This case is cited by:

- Cited – **Couwenbergh v Valkova** CA (**Bailii**, [2004] EWCA Civ 676)
The deceased’s family lived in Europe. The defendant had moved in as tenant and had become confidante and friend over many years. A will had been prepared leaving everything to the defendant. That will had been challenged alleging incorrect . .
- Cited – **Hamilton v Al Fayed (2)** CA (Times 13-Oct-00, Gazette 26-Oct-00, [2001] EMLR 15, [2002] 3 All ER 641)
A third party who financially supported a court action had no right to be joined as a party even at hearings at which decisions would be made which might affect his potential liabilities. Those who financially support proceedings must acknowledge . .
- Cited – **Couwenbergh v Valkova** CA (**Bailii**, [2005] EWCA 145 Civ)
The will was challenged as to its due execution. Statements had been produced that the two witnesses had not been present when the will was signed, but those

witnesses now said that they and not signed the statements.

Held: The evidence met . .

- Followed – **Owens v Noble** CA (**Bailii**, [2010] EWCA Civ 224, [2010] WLR (D) 73, **WLRD**, **Times**)

The respondent had been awarded substantial damages after an accident for which the appellant was responsible. The appellant now said that the claimant had exaggerated his injuries and misled the judge. The defendant argued that the correct approach . .

- Cited – **CS v ACS and Another** FD (**Bailii**, [2015] EWHC 1005 (Fam), [2015] WLR(D) 171,, **WLRD**)

W had applied to have set aside the consent order made on her ancillary relief application accusing the husband of material non-disclosure. She complained that her application to have the order varied had been refused on the ground that her only . .

- Cited – **Sharland v Sharland** SC (**Bailii**, [2015] UKSC 60, **Bailii Summary**, [2015] WLR(D) 408, **WLRD**, [2015] 3 FCR 481, [2015] Fam Law 1461, [2016] 1 All ER 671, [2015] 2 FLR 1367, [2015] 3 WLR 1070, UKSC 2014/0074, **SC**, **SC Summary**, **SC Video**)

The Court considered the impact of fraud upon a financial settlement agreed between divorcing parties where that agreement is later embodied in a court order? Does ‘fraud unravel all’, as is normally the case when agreements are embodied in court . .

(This list may be incomplete)

Last Update: 14 March 2019

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Posted on **March 14, 2019** by **admin**

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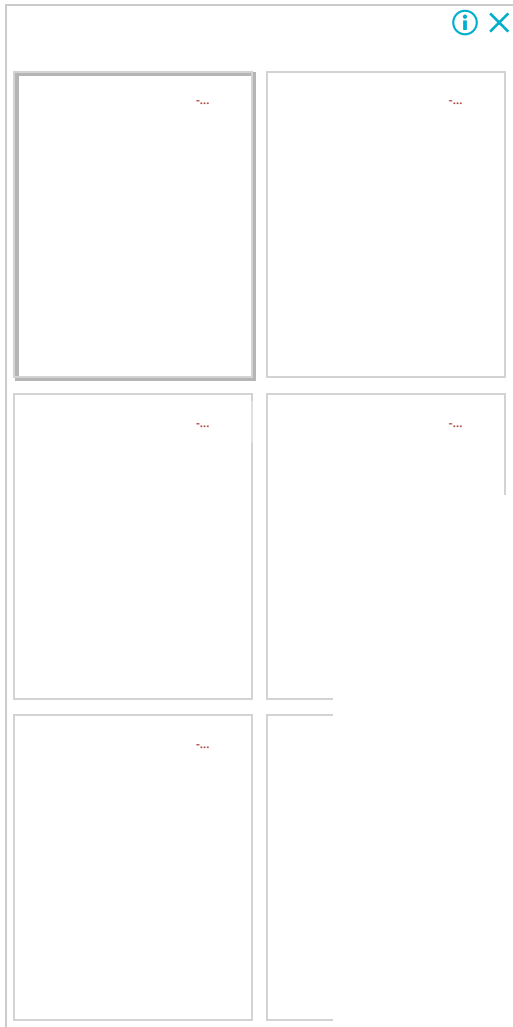


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