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## Contracts—Insane Persons' Transactions in North Carolina.

Controversies concerning the status of deeds and contracts made by insane persons have caused the courts perennial difficulty. Conflicts which arise between a desire to protect lunatics on one hand and innocent persons dealing with them on the other, and also between the rule that intent to be bound is necessary to form a contract and the rule that no person may stultify himself by his own plea<sup>1</sup> have caused much contradiction among the authorities.<sup>2</sup> The purpose of this note is to consider the North Carolina decisions relating to these transactions.

Because a "meeting of the minds" is of the essence of a contract, it has been said in this state that at law the contract of a person *non compos mentis* is void and an action for damages for non-performance will fail.<sup>3</sup> Although this is good authority as to entirely executory contracts, when there has been partial or complete performance the rule is not followed. When this is the case the insane person is treated as seeking rescission in equity and relief is granted on the basis of constructive fraud.<sup>4</sup>

This theory throws on the alleged lunatic the burden of proving insanity; but only a preponderance of the evidence is required.<sup>5</sup> The

Supp.) This statute did not go into effect until 1934 and the Supreme Court has not yet passed upon its validity. One of the main purposes of this legislation was to prevent the competition of cheap prison-made goods with the goods produced by free labor.

<sup>1</sup> This rule is not recognized in North Carolina. *Craddock v. Brinkley*, 177 N. C. 125, 98 S. E. 280 (1919).

<sup>2</sup> Such deeds are variously said to be void, as in *Hood v. Holligan*, 158 So. 759 (Ala. 1935); absolutely voidable, as in *Brewster v. Weston*, 235 Mass. 14, 126 N. E. 271 (1920); and voidable only on certain conditions, as in *England. Imperial Loan Co., Ltd. v. Stone*, [1892] 1 Q. B. 599. The general holdings are thoroughly covered by *Note* (1932) 32 COL. L. REV. 504. The English law is discussed at length in *Cook, Mental Deficiency and the English Law of Contract* (1921) 21 COL. L. REV. 424.

<sup>3</sup> *Carr v. Holliday*, 21 N. C. 344 (1836); *Cameron-Barkley Co. v. Thornton Light & Power Co.*, 138 N. C. 365, 50 S. E. 695 (1905).

<sup>4</sup> *Wadford v. Gillette*, 193 N. C. 413, 137 S. E. 314 (1927); *Searcy v. Hammett*, 202 N. C. 42, 161 S. E. 733 (1931). This rule does not apply to contracts of marriage which are by statute void unless there is birth of issue. N. C. CODE ANN. (Michie, 1931) §2495. However, a proceeding to set aside a marriage for this cause is a proceeding to dissolve the marriage bonds and alimony may be awarded *pendente lite*. *Lea v. Lea*, 104 N. C. 603, 10 S. E. 488 (1889). But cohabitation after recovery will not cure the defect. *Sims v. Sims*, 121 N. C. 297, 28 S. E. 407 (1897).

<sup>5</sup> *Lamb v. Perry*, 169 N. C. 436, 86 S. E. 179 (1915). While it is true that only a preponderance of the evidence and not "clear, strong, and convincing proof" is required, there is a "natural presumption" of sanity which must be overcome by the preponderance. *Jones v. Winstead*, 186 N. C. 536, 120 S. E. 89 (1923). Mental incapacity may be shown by non-expert witnesses. *Hodges v. Wilson*, 165 N. C. 323 81 S. E. 340 (1914). A finding of insanity by an inquisition for that purpose raises a presumption of fact that such is the case, and is to be admitted as such a finding and not as the opinion of twelve good men and true. *Arrington v. Short*, 10 N. C. 71 (1824); *Armstrong v. Short*, 8 N. C. 11 (1820). But the finding is not binding and may be rebutted. *Parker v. Davis*, 53 N. C. 460 (1862).

cases approve two charges as a measure of mental capacity: 1. Did the party know what he was about? 2. Did the party realize the nature and scope of his acts? Either of these is sufficient, but both may be used.<sup>6</sup> If the evidence satisfies this test the insane person is entitled to relief.<sup>7</sup> This statement is, however, subject to an exception based on a policy of protecting innocent persons who have dealt with lunatics; but a party relying on this has the burden of establishing certain conditions which the court has laid down as prerequisite to sustaining the contract or deed of an insane person.<sup>8</sup>

The exact scope of these conditions is somewhat in doubt. An early case sets them out thus: That the other party must have acted (1) in good faith, (2) without knowledge of the incapacity, (3) without taking advantage of the lunatic, (4) for a full consideration, (5) which manifestly went for the benefit of the insane person.<sup>9</sup> A later case in a similar list omits the last of these, but adds another, that the person *non compos mentis* be unable to restore the *status quo*.<sup>10</sup> The most recent North Carolina decision in point apparently not only disregards the requirement of benefit to the lunatic, but also that the consideration must be full.<sup>11</sup> There are dicta, but, so far as a thorough search revealed, no direct holdings, to the effect that the contracts and deeds of a person adjudicated insane are void and not voidable only, hence this exception does not apply to such cases.<sup>12</sup>

<sup>6</sup> Cameron-Barkley Co. v. Thornton Light & Power Co., 138 N. C. 365, 50 S. E. 695 (1905). The same tests apply to cases of extreme drunkenness. Burch v. Scott, 168 N. C. 602, 84 S. E. 1035 (1915).

<sup>7</sup> Goodwin v. Parker, 152 N. C. 672, 68 S. E. 208 (1910). Since the basis of setting aside deeds in this state is fraud, a subsequent *bona fide* purchaser without notice is protected. Adam v. Riddick, 104 N. C. 515, 10 S. E. 609 (1889). Hence, it is a fraud for one who has knowingly dealt with a lunatic to convey any property which he has obtained to another and the proceeds of such sale may be traced as a trust. Sprinkle v. Wellborn, 140 N. C. 163, 52 S. E. 666 (1905).

<sup>8</sup> Riggan v. Green, 80 N. C. 237 (1879); Ipock v. Atl. & N. C. Ry. Co., 158 N. C. 445, 74 S. E. 352 (1912).

<sup>9</sup> Riggan v. Green, 80 N. C. 237 (1879).

<sup>10</sup> Wadford v. Gillette, 193 N. C. 413, 137 S. E. 314 (1927).

<sup>11</sup> Searcy v. Hammett, 202 N. C. 42, 161 S. E. 733 (1931) (Suit by payee on defendant's endorsement of an extension note by a corporation of which he was a stockholder. Defendant was insane at the time and the only benefit which he received was the extension of time on the debt of the corporation. A judgment for the defendant was reversed. The court said that there was consideration for the note. Thus, although the holding may be regarded as merely that the note was ordinarily enforceable, it would seem unnecessary to send the case back unless there was also enough benefit to the lunatic to meet the requirement. But this extension can hardly be said to have been a full consideration manifestly to the benefit of the insane person.)

<sup>12</sup> Ipock v. Atl. & N. C. Ry. Co., 158 N. C. 445, 74 S. E. 352 (1912); Wadford v. Gillette, 193 N. C. 413, 137 S. E. 314 (1927).

Contracts as to necessities are enforced on a theory of implied contract and are not really an exception to the general rule. Thus a person who furnishes money at the request of one not an agent or guardian of the insane may recover. Surles v. Pipkin, 69 N. C. 513 (1873).

The lunatic's privilege to rescind is not, however, an absolute one. He must tender back any benefit which he has received,<sup>13</sup> or at least the court has within its discretion the power to require him to do so.<sup>14</sup>

Another class of cases in which fraud is presumed must be distinguished. In these, the showing is not total incompetency, but only mental weakness. In order to raise a presumption of fraud under such proof it is necessary to demonstrate some further "inequitable incidents—such as undue influence, great ignorance, want of advice, and inadequate consideration."<sup>15</sup> The fraud presumed from these circumstances is fraud in fact and may be rebutted by any evidence. Accordingly, it would seem that "presumption" here means "enough evidence to go to the jury on an issue of fraud."<sup>16</sup>

The trend of the cases seems to be away from the earlier rule of according high protection to insane persons in their business dealings and toward a policy of protecting those who in good faith trade with them. Particularly is this true in the cases involving the title to land. The question essentially resolves itself into a choice between throwing a loss on one of two innocent parties. A frank recognition of this problem by the courts would perhaps bring about a more satisfactory result in particular cases than the present *a priori* rules.

PETER HAIRSTON.

#### Insurance—Misrepresentation—Effect of Agent's Knowledge of Falsity of Statements in Application for Policy.

In an action on an insurance policy it appeared that insured had stated in his application for reinstatement of the policy that he was in good health, when as a matter of fact he had diabetes. Both insured and the agent who wrote the policy knew this. The trial court charged that in the absence of fraud or collusion between the agent and insured, the agent's knowledge would be imputed to the company. The jury found for the plaintiff. *Held*, judgment affirmed.<sup>1</sup>

Perhaps the clearest type of situation calling for the application of the doctrine stated by the trial judge in this case is found when the policy provides that it shall be void if certain facts are present, and the agent has full knowledge of the presence of such facts. Thus, where

<sup>13</sup> West v. Seaboard Air Line Ry. Co., 151 N. C. 231, 65 S. E. 979 (1909).

<sup>14</sup> Ipock v. Atl. & N. C. Ry. Co., 158 N. C. 445, 74 S. E. 352 (1912).

<sup>15</sup> Smith v. Beatty, 37 N. C. 456 (1843); Dixon v. Green, 178 N. C. 205, 100 S. E. 262 (1919).

<sup>16</sup> Suttles v. Hay, 41 N. C. 124 (1848). The issue submitted to the jury in these cases is not mental competency, but fraud. Dixon v. Green, 178 N. C. 205, 100 S. E. 262 (1919).

<sup>1</sup> Colson v. State Mutual Assurance Co., 207 N. C. 581, 178 S. E. 211 (1935).