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Divorce: Decree obtained by collusion not subject to attack by either party

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action instituted.[9] If it is shown that the majority are acting fraudulently and in bad faith so as to benefit themselves rather than the corporation, even though the corporation be solvent, the minority can apply to a court of equity to restrain their acts, to make an accounting, and to have a temporary receiver appointed. If, however, there is no showing that the corporation is irresponsible or insolvent and the charges of misconduct are denied the court will refuse to appoint a receiver *pendente lite*.[10]

Whether a stockholder may maintain an action for a wrong suffered by the corporation previous to the time he came into possession of his stock has never been decided in this state.[11] At least he has no right of action recognizable in a court of equity where he has by his own previous act assented to the wrong complained of or where he has obtained a personal benefit therefrom.[12]

RICHARD F. ROCHE.

Divorce: Decree obtained by collusion not subject to attack by either party.—Collusion has been defined by the authorities generally as being "an agreement between husband and wife to procure a judgment dissolving the marriage status, which judgment, if the facts were known, the court could not grant." A recent case in which the court was called upon to decide whether either party could have a decree obtained through fraud and collusion set aside, is *Newcomer v. Newcomer*, 201 N. W. 579 (Iowa). The wife had procured the divorce and the decree was adhered to by both parties. The husband paid alimony as directed by the court and subsequently remarried. The wife filed a petition with the trial court for an increase in alimony but before this petition was heard, she brought another action to set the decree aside because it was procured by fraud and duress. She alleged that neither party had been a resident of the county where the decree was obtained and that therefore the court had no jurisdiction. The Supreme Court decided that the plaintiff, before she was entitled to procure that decree, was compelled to establish that she or her husband was a resident of Toma County at the time of the commencement of the suit, that her allegations in the divorce action were false and that after procuring a decree by such false statements, she had no standing in a court of equity to set that decree aside. She cannot accept its benefits and then avoid it after being a party to the fraud by which it was obtained. The court

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[9] *Strong v. McCagg*, 55 Wis. 624, 13 N.W. 895: "There is no statute in this state authorizing one of several stockholders to maintain a bill in equity in his own name or in the name of the state without leave being first granted therefore by the Supreme Court, to dissolve a corporation and convert its property into money and then divide the same among a portion of the stockholders and in the absence of statutory authority such a suit cannot be maintained."

[10] *Hinckley v. Pfister*, 83 Wis. 64, 53 N.W. 21; *Katz v. DeWolf*, 151 Wis. 337, 138 N.W. 1013.

[11] 6 MARQUETTE LAW REVIEW 170.

[12] *Figge v. Bergenthal*, 130 Wis. 594, 109 N.W. 581.

in its opinion cited a Washington case[1] where it was held that when a complaint for divorce by a husband alleged his residence within the state, the wife, who appeared and procured a decree in her favor, could not afterwards attack such decree on the ground that the husband was a nonresident. Neither could she attack the decree on the ground that the husband misrepresented the amount of his property when she had had ample means of ascertaining the correct amount.[2]

In general it may be said, that courts will not countenance an attack by either party upon a decree obtained by collusion. In the first place it is a direct fraud upon the sanctity of the court; and secondly, it is maliciously antagonistic to sound public policy. "Friendly Contests" in courts of justice, where ostensible suits are commenced and fraudulent decrees obtained are not looked upon favorably by the courts when the actual facts become known.

JOHN B. BENNETT.

Fixtures: Portable garage not a part of realty and a tenant's failure to remove same on surrender of premises is not a forfeiture of right.—Before the reign of Henry the VI, common law courts gave very little consideration to personal property and hence, the law in relation to such property has largely developed since that time. Along with that development, there arose questions as to what was and what was not personal property. From cases involving this question, the courts have built up the law of fixtures. Some of the greatest text writers have been at a loss to define the term "fixtures," but the following appears to be the most lucid definition: "Things associated with and more or less incidental to the occupation of lands or houses or either thereof and with regard to which the question most frequently arising is of their removeability by the persons claiming them.[1]

In the case of *Hanson v. Ryan,* 201 N. W. 749 (Wis.), the subject of fixtures was treated very ably. The plaintiff alleged that he was the owner of "one portable, moveable, and collapsible garage made of wood and valued at $200," the suit being for its immediate possession. The plaintiff had been in the habit of renting portable garages to tenants throughout the city. These garages contained no floor and merely rested upon the ground. The plaintiff rented a garage to one Dawson, who was a tenant of the defendant. Dawson moved from the premises and at the time of his removal, was in default in his rent. The defendant sued for the rent and recovered a judgment, levying on the garage, which the tenant had failed to remove. The plaintiff claimed that the garage was personal property and that the defendant landlord had lost his interest in it by his execution thereon.

The question therefore was whether this portable garage was a fixture

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[1] *Ferry v. Ferry,* 37 Pac. 431 (Wash.).

[2] Other citations upon that point are *Ellis v. White,* 17 N.W. 281 (Iowa); *Mohler v. Shank,* 61 N.W. 981 (Iowa); *Carren v. Carren,* 69 Pac. 465 (Utah); *Bankroft v. Bankroft,* 173 Pac. 579 (Cal.).

[1] Reeves on *Real Property,* Sec. 10, page 14.