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JUDGMENTS-COLLATERAL ATTACK-INSUFFICIENCY OF THE CAUSE OF ACTION AS A BASIS FOR DENYING JURISDICTION OF A COURT RENDERING A DEFAULT JUDGMENT

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JUDGMENTS—COLLATERAL ATTACK—INSUFFICIENCY OF THE CAUSE OF ACTION AS A BASIS FOR DENYING JURISDICTION OF A COURT RENDERING A DEFAULT JUDGMENT—In a previous action, *A*, as assignee of a conditional sales contract, sought to recover the property when the purchase price was not paid. Defendant counterclaimed for damages because of alleged fraud of the assignor in making the sale. On appeal, the Montana Supreme Court held that defendant could not have an affirmative judgment on the counterclaim, but could use his claim as recoupment only.[1] On remand, *A*'s attorney moved for continuance until his client could secure a new attorney. The motion was denied, and on the day set for trial *A* was not represented. As a consequence, a default judgment was entered for the amount of the counterclaim. Land belonging to *A* was levied upon and sold to defendant in satisfaction of this judgment. In the present action to quiet title, *B*, son of *A*, contended that the affirmative judgment upon the counterclaim was void and that the levy and sale did not pass title to the land. *Held,* since defendant did not state a cause of action in the first case sufficient for an affirmative judgment, the default judgment is void and subject to collateral attack. *Apple v. Edwards,* (Mont. 1949) 211 P. (2d) 138.

Generally, before a court's action can be collaterally attacked, the alleged error must go to the jurisdiction of the court.[2] Usually, it is said that the basis for jurisdiction is secured when the parties and the subject matter are properly before the court.[3] It does not matter that the cause of action is insufficient,[4] nor that the judgment is by default,[5] as long as the matter presented challenges the attention of the court.[6] It is reasoned that to allow a collateral attack for other reasons would not secure the desired stability of judgments and orders, would harass the court with protracted litigation, and would destroy the value of res judicata. Evidently, it is felt that the policy considerations outweigh the hardship in the comparatively few cases where the action of the court was clearly erroneous and the regular means of judicial review were for some reason not

[1] Apple v. Edwards, 92 Mont. 524, 16 P. (2d) 700 (1932).

[2] VAN FLEET, COLLATERAL ATTACK 79, §61 (1892); 1 FREEMAN, JUDGMENTS, 5th ed., §§321, 333 (1925); Laing v. Rigney, 160 U.S. 531, 16 S.Ct. 366 (1896); Hoit v. Snodgrass, 315 Ill. 548, 146 N.E. 562 (1925); Protest of Gulf Pipe Line Co., 168 Okla. 136, 32 P. (2d) 42 (1934).

[3] Fauntleroy v. Lum, 210 U.S. 230, 28 S.Ct. 641 (1908); Chicago Title & Trust Co. v. Mack, 347 Ill. 480, 180 N.E. 412 (1932); Martin v. Sheppard, 145 Tex. 639, 201 S.W. (2d) 810 (1947); Mitchell v. Arnall, 203 Ga. 384, 47 S.E. (2d) 258 (1948).

[4] 1 FREEMAN, JUDGMENTS, 5th ed., §363 (1925); L.R.A. 1916E, 316; Pattison v. Kansas State Bank, 121 Kan. 471, 247 P. 643 (1926); United States Nat. Bank v. Eldridge, 49 Idaho 363, 288 P. 416 (1930); State ex rel. Delmoe v. District Court, 100 Mont. 131, 46 P. (2d) 39 (1935); Estate of Keet, 15 Cal. (2d) 328, 100 P. (2d) 1045 (1940); 9 TEX. L. REV. 254 (1931).

[5] 15 R.C.L., Judgments, §120 (1917); 128 A.L.R. 472 (1940); Hallock v. Jaudin, 34 Cal. 167 (1867); 20 MINN. L. REV. 828 (1936).

[6] 1 FREEMAN, JUDGMENTS, 5th ed., §365 (1925); People's Bonded Trustee v. Wight, 72 Utah 587, 272 P. 200 (1928); Horstman v. Bowermaster, 90 Okla. 262, 217 P. 167 (1923).

used.[7] Despite this general approach, the courts have allowed judgments to be challenged on other grounds in some situations. Thus, where a default judgment in excess of that demanded has been given, the judgment is held void and subject to collateral attack.[8] Likewise, where a complaint is so deficient that it conclusively negates the existence of a cause of action at the time the default judgment was entered, some courts, as in the principal case, hold the judgment void and subject to collateral attack.[9] If relief is to be granted after the time for direct judicial review has passed, it would seem necessary that the error show a lack of jurisdiction in the court. But, it may be questioned whether relief in these circumstances is a matter of jurisdiction at all. Rather, it would seem to be simply a means for allowing the court in the second case a free hand in relieving hardship without having to examine the reason for the delinquent party's delay in seeking review.[10] Viewed in this light, it seems doubtful whether the court should grant such extraordinary relief. All states provide some remedial procedure which allows a default judgment to be opened or set aside and defended, if the delay in answering can be justified. This should adequately protect the delinquent party's rights.[11]

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[7] 1 FREEMAN, JUDGMENTS, 5th ed., §305 (1925); Comment, 13 ORE. L. REV. 346 (1934); 49 YALE L.J. 959 (1940); Milstein v. Turner, 89 Cal. App. (2d) 296, 200 P. (2d) 799.

[8] 1 FREEMAN, JUDGMENTS, 5th ed., §354 (1925); 11 L.R.A. (n.s.) 803 (1908); 11 Ann. Cas. 353 (1909). It can be reasoned that the excess judgment is void because there is a lack of jurisdiction over the party, since the party in default has had no notice or opportunity to be heard upon a claim not put in issue by the complaint. Reynolds v. Stockton, 140 U.S. 254, 11 S.Ct. 773 (1891). However, many courts seem to make a more complicated analysis in treating the excess judgment as an exception to the general jurisdictional rules. See State v. District Court of the Eighth Jud. Dist., 33 Wyo. 281 at 289, 294, 238 P. 545 (1925).

[9] 1 FREEMAN, JUDGMENTS, 5th ed., §382 (1925); Excise Board of Carter County v. Chicago, R.I. & P. Ry., 152 Okla. 120, 3 P. (2d) 1037 (1931); Coombs v. Benz, 232 Mo. App. 1011, 114 S.W. (2d) 713 (1938); Roche v. McDonald, 136 Wash. 322, 239 P. 1015 (1925); Consolidated Electric Storage Co. v. Atlantic Trust Co., 50 N.J. Eq. 93, 24 A. 229 (1892). See O'Neil v. Martin, 66 Ariz. 78, 182 P. (2d) 939 (1947).

[10] In re Field's Estate, 40 N.M. 423, 60 P. (2d) 945 (1936); Windsor v. McVeigh, 93 U.S. 274 at 282 (1876); Hill v. Draper, 63 Ark. 141, 37 S.W. 574 (1896); 59 YALE L.J. 345 (1950); 29 GEO L.J. 204 (1940); comment: 13 ORE. L. REV. 346 (1934).

[11] Gillespie v. Fender, 180 Cal. 202, 180 P. 332 (1919); 15 R.C.L., Judgments, §§119, 174, 177 (1917); 52 Am. St. Rep. 795 (1897); 1 FREEMAN, JUDGMENTS, 5th ed., §357 (1925).