

1952

CIVIL PROCEDURE-JUDGMENTS-COLLATERAL ATTACK ON DECREE OF DISTRIBUTION OF A PROBATE COURT

David W. Rowlinson
University of Michigan Law School

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Civil Procedure Commons](#), [Estates and Trusts Commons](#), [Jurisdiction Commons](#), and the [Property Law and Real Estate Commons](#)

Recommended Citation

David W. Rowlinson, *CIVIL PROCEDURE-JUDGMENTS-COLLATERAL ATTACK ON DECREE OF DISTRIBUTION OF A PROBATE COURT*, 50 MICH. L. REV. 463 (1952).

Available at: <https://repository.law.umich.edu/mlr/vol50/iss3/8>

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

RECENT DECISIONS

CIVIL PROCEDURE—JUDGMENTS—COLLATERAL ATTACK ON DECREE OF DISTRIBUTION OF A PROBATE COURT—Testator's will devised a tract of land to his three nieces and directed that the nieces should not sell or dispose of the land for twenty years after his death. This provision was incorporated in the decree of the probate court distributing the land to the three nieces. After the decree of distribution had become final, one of the nieces brought the present action for partition. Over the objection that the decree was conclusive and forbade this type of alienation, the trial court ordered partition. On appeal, *held*, affirmed. The condition restraining alienation for twenty years is forbidden by statute¹ and therefore that part of the decree is void and is not binding on the distributees. *Wharton v. Mollinet*, (Cal. App. 1951) 229 P. (2d) 861.

In general, a decree of a probate court partakes of the nature of a judgment in rem² and, when made within the court's defined jurisdiction, is entitled to the same conclusiveness as adjudications of other courts.³ Under the California statute, the final decree of distribution of a decedent's estate is conclusive as to the rights of heirs, devisees, and legatees in the estate.⁴ Consequently, the decree can not be collaterally attacked for errors or irregularities committed in the exercise of its jurisdiction, but is subject to being set aside, reversed, or modified on direct attack in the probate court or on appeal,⁵ and under special circumstances equity may grant relief from the terms of a final decree of distribution by declaring that the distributees under the decree hold as constructive trustees.⁶ The court in the principal case holds that the decree of distribution, insofar as it purports to restrain alienation, is void on its face and subject to collateral attack. This holding must rest on the ground that a court, although it has jurisdiction of the subject matter and parties, has no power to render a judgment which is contrary to the statute prohibiting restraints on alienation. This involves another aspect

¹ Cal. Civ. Code (Deering, 1949) §711: "Conditions restraining alienation, when repugnant to the interest created, are void."

² 1 WOERNER, AMERICAN LAW OF ADMINISTRATION, 3d ed., §148 (1923); Simes, "In Rem Aspects of Administration of Estates," 43 MICH. L. REV. 675 (1945); Estate of Burnette, 11 Cal. (2d) 259, 79 P. (2d) 89 (1938); Ryan v. Plath, 18 Wash. (2d) 839, 140 P. (2d) 968 (1943).

³ 1 FREEMAN, JUDGMENTS, 5th ed., §372 (1925); 3 WOERNER, AMERICAN LAW OF ADMINISTRATION, 3d ed., §561 (1923); St. John v. Andrews Institute, 192 N.Y. 382, 85 N.E. 143 (1908); Estate of Greenway, 236 Wis. 503, 295 N.W. 761 (1941); Estate of Easter, 24 Cal. (2d) 191, 148 P. (2d) 601 (1944).

⁴ Cal. Prob. Code (Deering, 1949) §1021; Cunha v. Hughes, 122 Cal. 111, 54 P. 535 (1898); Cook v. Cook, 17 Cal. (2d) 639, 111 P. (2d) 322 (1941); Ferguson v. Ferguson, 58 Cal. App. (2d) 811, 137 P. (2d) 735 (1943); Estate of White, 69 Cal. App. (2d) 749, 160 P. (2d) 204 (1945); 11B. Cal. Jur. 796 (1934).

⁵ 1 FREEMAN, JUDGMENTS, 5th ed., §357 (1925); 36 MICH. L. REV. 120 (1937); McLelland v. McLelland, 17 Cal. (2d) 552, 110 P. (2d) 1034 (1941); Crew v. Platt, 119 Cal. 139, 51 P. 38 (1897).

⁶ Sohler v. Sohler, 135 Cal. 323, 67 P. 282 (1902) (extrinsic fraud of distributee); Estate of Walker, 160 Cal. 547, 117 P. 510 (1911) (admission of will after distribution as an intestate estate); Bacon v. Bacon, 150 Cal. 477, 89 P. 317 (1907) (mistake).

of jurisdiction, want of authority to render the particular judgment entered,⁷ and is akin to lack of jurisdiction of the subject matter.⁸ The most frequent application of this aspect of jurisdiction is found in cases where the court is exercising special statutory powers and the judgment rendered is shown on its face not to be in substantial compliance with mandatory provisions of the statute giving the court jurisdiction over that class of cases,⁹ or where the court enters judgment or grants relief beyond the prayer of the complaint.¹⁰ In the principal case, however, the court was not acting within a special limited field of jurisdiction, but rather under its general powers as a probate court and acting as such, it was authorized by statute to determine the validity of all provisions in the will and the rights of heirs, devisees, and legatees thereunder.¹¹ In earlier decisions under the same statute, the California court has held that a decree of distribution which distributes an estate in trust, the terms of which violate the statute against perpetuities, is only an erroneous judgment and not subject to collateral attack.¹² Moreover, it has been held, where a statute is in force which makes bequests to charities void where the will has been executed within thirty days of testator's death, that a decree of distribution is not subject to collateral attack which distributes such bequests, even though these facts appear on the face of the decree.¹³ These cases properly recognize that an erroneous judgment, where authority exists to pronounce judgment, can be modified only through direct attack. It is submitted that the court in the principal case has failed to distinguish between a decree which is void because of a want of power in the court to render that decree, and a decree which is voidable because of error in the exercise of its power.¹⁴ The conclusion of this court, that whatever a court orders contrary to public policy as expressed by statute is beyond its jurisdiction and void, seems unsound. All erroneous judgments do what the law forbids and the position of this court would thus lead to a denial of power in a court to commit error.

David W. Rowlinson

⁷ 1 FREEMAN, JUDGMENTS, 5th ed., §354 (1925); 33 C.J. 1076 (1924); *Windsor v. McVeigh*, 93 U.S. 274, 23 L. Ed. 914 (1876); *Johnson v. Manhattan Ry. Co.*, 289 U.S. 479, 53 S.Ct. 721 (1933).

⁸ *In re Wooley's Estate*, 96 Vt. 60, 117 A. 370 (1922).

⁹ *Bigelow v. Forest*, 9 Wall. (76 U.S.) 339 (1869) (under a statute authorizing confiscation of life estate, a decree ordering sale of the fee interest held void as to excess); *Grannis v. Superior Court*, 146 Cal. 245, 79 P. 891 (1905) (a final decree of divorce without interlocutory decree and lapse of statutory period held void); *Tonningsen v. Odd Fellows' Cemetery Assn.*, 60 Cal. App. 568, 213 P. 710 (1923) (decree of foreclosure ordering sale within statutory period of redemption held void); *Contra, Moore v. Jeffers*, 53 Iowa 202, 4 N.W. 1084 (1880); *Cline v. Niblo*, 117 Tex. 474, 8 S.W. (2d) 633 (1928) (decree directing sale of decedent's homestead for payment of debts held void).

¹⁰ *Munday v. Vail*, 34 N.J.L. 418 (1871); *Sachs v. Gillette*, 101 Minn. 169, 112 N.W. 386 (1907).

¹¹ Cal. Prob. Code (Deering, 1949) §1021; *Keating v. Smith*, 154 Cal. 186, 97 P. 300 (1908); *Estate of White*, supra note 4.

¹² *Crew v. Platt*, supra note 5; *Keating v. Smith*, supra note 11; *Estate of Gardner*, 45 Cal. App. (2d) 559, 114 P. (2d) 643 (1941); see also *O'Leary v. Bennett*, 190 Wash. 115, 66 P. (2d) 875 (1937).

¹³ *Estate of Scrimger*, 188 Cal. 158, 206 P. 65 (1922).

¹⁴ *Rivard v. Missouri Pac. Co.*, 257 Mo. 135, 165 S.W. 763 (1914); *Fauntleroy v. Lum*, 210 U.S. 230, 28 S.Ct. 641 (1908).