No: 22-7576 ORIGINAL

In Re The Supreme Court of United States

Crystal Maye Trustee Sui Juris , behalf for 2009 family,

Blanch Bale living Irrevocble Trust etc.,

Plaintiff, Appellant,

v.

BREVARD COUNTY TAX COLLECTOR No:05-2015-CA-38428

OCEAN TAX DEED INVESTMENT LLC.,

Defendant Appellee's.

IN THE SUPREME COURT OF U S for WRIT OF CERTIORARI, on FLA SUP CT, on 5D23-0596 FL

BREVARD COUNTY FIFTH CIRCUIT COURT, on EXPARTE JUDGE HARISS DEFAULT ORDER

PETITONER WRIT OF CERTIORARI BRIEF on Fl SUPREME COURT AND 5D23-0596

Miss Crystal Maye Trustee Sui Juris own consul

50 E. 191 Street, Apartment 4 M

Bronx New York 10468

1646-353-4429,

i

QUESTION

1) whether tax appraiser has the authority to create a tax regulate private property not sanction by legislature or congress

2) whether agency proceedually followed notice requirements R.6335, R.6065 R.1.070 to serve trustee F.S.736082, on Trust, beneficaries, whether the presence of in-state beneficiaries alone empower a *State to tax trust income that has not been distributed to the beneficiaries* where the beneficiaries have no right to demand that income and are uncertain.

3)whether local court florida Circuit Exparte had personal jurisdiction to hear, determine the case without proper service on trustee deprive due process of law. whether act of 1855 10 Stat. At large 701 enforcible or apply or violate CJS 90 Tust law Section 162.

4) whether court had juridiction in the order it has given erroneous, or was the prior 1992 title viod, atfer the house, property transferred into the 2009 family trust, whether trustee beneficiarie were deprive right to object, violate the 5th 14th amend no notice 6065, whether elementary as 28 USC 1691 R.4 for R.1.070 is fundamental requirement for due process is notice reasonably by sewer service calculated, under all the circumstances, to apprise interested parties of a pendancy of the action against trust. Whehter a statue exist Sec.423.2c.

LIST OF PARTIES

The Caption in this case contain all the names in this proceedings to the Florida Supreme Court of the (BREVARD County TAX COLLECTOR No:05-2015-CA-38428 OCEAN TAX DEED INVESTMENT LLC., , Defendant and Respondent.

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RECIEVED ON 4/14/23

WRIT OF CERTIORARI

Crystal Maye F.S.736.082 Trustee **Petition for equitable relief ;grant Writ vacate reverse default Order 9/21/15 obtain by fraud violated due process 6th 5th 14th Amdt Sec.6335, 6065 no service, tax Trust**

OPENION Below Sup Ct Fla dismissed 4/5/23 5DCA 3/17/23, Writ mandamus for 05-2015-CA-38428

Fl 5DCA error by local court exparte Judge Harris lack jurisdiction in default order granted possesion to appellees. Petitioner relief Writ to aid court to set aside vacate fraudulant order 9/21/15 App A.

JURISDICTION

The original Jurisdiction In Re Supreme Court united States Constitution Article 3)28 USC 1651. confered. Writ Certiorari .conflict U.S.Rule 10 other courts, violation 5th 14th Amdt, inproper sewer **service R.6335, tax on family Trust F.S.736.082** Trustee, **no connection to state. Illegal taking of land without notice R.4. R.1070 no trial hearing, by deception. No seal 28 USC 1691,CPLR.3016,UCC2-201**

CONSTITUTIONAL AND STATUTORY PRVISION INVOLVED

Constitution issues R.1.070 violation of petitioner 5th and 14th Amdt due process of right protected gauranteed by law, violate R.6335, 6065 an fraud. A Declaration also on 10 Stat. 701. required.

STATEMENT OF THE CASE ISSUES

A nature of the case De Novo

Quasi in rem refers to a legal action reference, pge 7 App E attach witness testimony. by affidavit.

I. FACTS

Background. for Quiet Title under statue of fraud, violate R.6335 Rule.4 service. Rule.60 This action Quasi in rem refers to a lawfull action involves conversion, illegal tax deed, no notice on ownership *family irrevocably Trust asset located on 1637 Hays street NW Palm Bay Florida (family trust no* connection to state is about the limits of a State's power to tax Trust. Florida imposes a tax on any trust income that "is for the benefit of Fl"as North Carolina resident. N. C. Gen. Stat. Ann. §105–160.2 (2017)., in violation of Fl. Stat. 196.181. Exempt law. Gray v. Winthrop. Status on 10 Stat. at large 701

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1 Foot note North Carolina Dept. of Revenue v. Kimberley Rice Kaestner ... and .Case LAW UNPUBLISHED IN OFFICIAL REPORTS APPEAL OF THE STATE OF CALIFORNIA FIRST APPELLATE DISTRICT DIVISION FOUR FIRST APPELLATE DISTRICT DIVISION FOUR Petitioner reference on PRATT, SuperiCt.No. 960479) and LINDA CASWELL, as Trustee etc., Plaintiff and Appellant, A074955 The trust was not notified or served. The Illinois Appellate Court in Mendelelson held when a trust instrument list a house as part of the trust the house belong to the trust. even if the deed was not fomally transfered there. Appellant also to clarefy this congressional at 1855 10 Stat. At large 701 issue sign by the President relevant to location for this private family Trust in caption ownership rights violated under this republican form of our government, in need for this court assistance.

U.S. Supreme Court

Ex parte Milligan, 71 U.S. 4 Wall. 2 2 (1866)Ex parte Milligan
71 U.S. (4 Wall.) 2

Page 71 U. S. 137

government of the United States -- neither President, nor Congress, nor the Courts -- possesses any power not given by the Constitution.

We assent fully to all that is said in the opinion of the inestimable value of the trial by jury, and of the other constitutional safeguards of civil liberty.

The Constitution itself provides for military government, as well as for civil government. And we do not understand it to be claimed that the civil safeguards of the Constitution have application in cases within the proper sphere of the former

What, then, is that proper sphere? Congress has power to raise and support armies, to provide and maintain a navy, to make rules for the government and regulation of the land and naval forces, and to provide for governing such part of the militia as may be in the service of the United States.
It is not denied that the power to make rules for the government of the army and navy is a *power to provide for trial and punishment by military courts without a jury. It has been so* understood and exercised from the adoption of the Constitution to the present time.

Nor, in our judgment, does the fifth, or any other amendment, abridge that power. "Cases arising in the land and naval forces, or in the militia in actual service in time of war.

FACTS

This case was no fully contest 2015 in any court, no Service was made on the owner, now demand common law equitable relief to redress grievances for damages trustee duty am demanding to see whats in the original local 2015 Fl Cir court record by Writ of Certiorari remedy to correct null void fraudulent tax deed action by appellee's deception on trust asset,there is no required R.6065 sign oath tax assessment element served no notice 6335 served, the indefensible writ of possession was in front *of a exparte court judge Harris had no personal jurisdiction, there was no fl R1.070 made complaint on* owner trust, there was no claim file on prior owner Perelena Douce decease trustor, the trustor form Blanch Bale irrivocable living Trust appointed Crystal Maye trustee, to take care of her disable Daughter, and for her grand daughter, and grand son beneficiaries equitable rights 2009 November 10, to prevent the very action now by defendants from steeling there birthright. No discovery finding by grand jury no indictment presentment or jury trail, or proper service on owner or Article 3 Sec 2 Cl 3 for the united States and 6 and 7th Amendments was violated. Marbury v Madison 5 US 137

B HISTORY

Trustee duty appellant First filing in this case was to Sup Ct in Fl. 12,9 2023 I was not served with any paper works or notice prior, I notice something was wrong that the owner of asset was not sued or any claim file for tax against prior trustor decease, but a writ of possession filed against trustor son Oliver-Vaughn:Douce, who had no interest in trust asset so its my duty as trustee from new York that this improper sewer service willfull left on the property to keep appellant away from a full proceeding by defendants, no discovery was done its a fraud, must be vacated and the 20015 record investigated to see what is in it, the asset has been in Blanch bale living irrevocable trust from 2009 Nov 10 this private

trust has no connection to the state its not taxable and must be served or notified decease did not own *the property the trust dose, and we have witness to testify in court in front of a jury 7th and 5th 14* violation in a denial jury no law no indictment no presentment no charge,the court had no personal jurisdiction, to produce the tax statue element and evidence. I have control of it the Florida Police knew about me prior see under statue of fraud this writ of certiora is remedy, the Fl courts transfer it to 5DCA. to challenge government seem are at war against the people Appellant trustee F.S.736.082 Crystal May use this letter dated 12/9/2009 in App cases as an example to raise the safe guard violation issues circumstances deprivation rights of how I have been treated as American as trustee for asset seizes, I was not apart in 2015 no knowledge notice service or claims appearance in court filing by defendants no procedures exhibit require section rule by 423.2 or statue Authority intent for allege taxes by legislature a tax on Perelena Douce, decease, trustor, or Blanch bale irrevocable living trust, without indictment presentment trial by assize jury of peers no full contest proceeding between parties

beneficiaries for there equity interest, but only by defendants willful deception not to served appellant to succeed in gaining advantage by keeping away appellant from court by fraud on court by sewer service copy 5 day writ for possession constitionality illegal tax deed defendants not entitle to, left on property to Oliver Vaughn Douce not owner, who has no lawful equitable interest asset trust.See LINDA CASWELL. appellant challenge the 2015 original writ of possession,without a finding by jury in violation of 6th 7th 5th 14th amendments under the statue of fraud, am writ certiora requesing this court to examinations affidavits ,files of the 2015 local Cir court original record is where to find fraud in record by deception and concealment to take private Land with no connection to the state violate trust law, 2009 creation of trust terminate warranted deeds in App A Cooper v. Aaron, 358 U.S. 1, 78 S. Ct. 1401 (1958. As **in a case Pollack v Farmer. and Economy Plumbing & Heating v. U.S. 1972 See 90 Stat.1824.** **William H. Taff page 34,35, the 27 president of the united states decision** denied power to tax American. R.201 If you look at the 2015 App A no **COURT SEAL** violate 28 USC 1691 NULL VIOD.

Kalb. Feuerstein (1940) 308 US 433,60 S Ct 343, 84 ed 370).,**Grimes v Massey Ferguson,** Munn v. Illinois, 94 U.S. 113, **James Talcott, Inc. v Gee, 5 UCC**

U.S. Supreme Court

United States v. Throckmorton, 98 U.S. 61 (1878)United States v. Throckmorton

98 U.S. 61

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA

Syllabus

1. It is essential to a bill in chancery on behalf of the United States to set aside a patent for lands or the final confirmation of a Mexican grant that it shall appear in some way, without regard to the special form, that the Attorney General has brought it himself or given such authority for bringing it as will make him officially responsible therefor through all stages of its presentation.

2. The frauds for which a bill to set aside a judgment or a decree between the same parties, *rendered by a court of competent jurisdiction, will be sustained are those which are extrinsic* or collateral to the matter tried, and not a fraud which was in issue in the former suit.The cases where such relief has been granted are those in which, by fraud or deception practiced on the unsuccessful party, he has been prevented from exhibiting fully his case, by reason of which there has never been a real contest before the court of the subject matter of the suit.

The circuit court of the United States has now no original jurisdiction to reform surveys made by the land department of confirmed Mexican grants in California.
The facts are stated in the opinion of the Court.
Page 98 U. S. 62
MR. JUSTICE MILLER delivered the opinion of the Court.
In this case a bill in chancery is brought in the Circuit Court of the United States for the District of California, to use the language of the bill itself, "by Walter Van Dyke, United States attorney *for that district, on behalf of the United States,*" *against Throckmorton, Howard, Good, and* Haggin.The object of the bill is to have a decree of the court setting aside and declaring to be null and void a confirmation of the claim of W. A. Richardson under a Mexican grant to certain lands, made by the board of commissioners of private land claims in California on the twenty-seventh day of December, 1853, and the decree of the district court of the United States, made Feb. 11, 1856, affirming the decree of the commissioners, and again confirming Richardson's claim. The general ground on which this relief is asked is that both these decrees were obtained by fraud. As in"2015 no service on trust" allege tax and the Writ.

The specific act of fraud which is mainly relief on to support the bill is that after Richardson had filed his petition before the board of commissioners, with a statement of his claim and the documentary evidence of its validity, March 16, 1852, he became satisfied that he had no sufficient evidence of an actual grant or concession to sustain his claim, and with a view to supply this defect, he made a visit to Mexico, and obtained from Micheltorena, former political chief of California, his signature, on or about the first day of July, 1852, to a grant which was falsely and fraudulently antedated, so as to impose on the court the belief that it was made at a time when Micheltorena had power to make such grants in California, and it is alleged that *in support of this simulated and false document he also procured and filed therewith the* depositions of perjured witnesses."no verified serve on asset trust owner in court record"
There is much by fraud on deception practiced on the unsuccessful party, who has been prevented from exhibiting fully his case, by reason of which there has never been a real contest before the court of the subject matter of the suit. The Remedy is Writ of Certiorari

2 CONTENTION OF THE PRATIES REASON FOR GRANTING WRIT OF certiorari

2015 the clerk of lower courts even the appeals court and state court ignore fact that the defendants attorneys, agents sewer server by Sheriff left 5 day writ of possession at address in wrong name Oliver Vaughn Douce who had no ownership interest in asset trust, tax appraiser, violate tax law Fl, Stat. Sec 196.181, violate Section 423.2 by officers of the government were false in their duty by deception and that they assisted connived at the fraud, that Sup Court in Fl. now dismissing the case to conceal this fraud from expose in the brevard county record subject, which will be hereafter considered, sufficiently appellant makes this charge verified For the present, issues this court to investigate lower Cir ct Fl record,who is the owner, proof was not served or notified trustee. Defendants ponzi scheme to steel private property of someone else, they cant proof owed taxes, where no license or privileges or commerce, which legislation exempt from all taxes, no tax claim file in the name on warrantee deed, even thou that name had no interest in the trust, because the asset was 6yrs prior transfer 2009 to blanch bale irrevocable living trust true copy in App E without service connection authority defendants has no standing or jurisdictions, to tax trustee or trust, no en

forcible statue intent, defendant should not profit and gain from there unclean hands. *Wisconsin v. J. C. Penney Co.*, 311 U.S. 435, 444, 61 S.Ct. 246, 85 L.Ed. 267 **(1940). The** " *McCulloch v. Maryland*, 4 Wheat. 316, 428, 4 L.Ed. 579 **(1819),**

While the bill is elaborate in its statement of matters which
Page 98 U. S. 63
decree in that court it remained under the consideration of the Attorney General another year, when he authorized the dismissal of the appeal. The case, then, unless these officers neglected their duties, underwent the scrutiny of two judicial tribunals and of the Attorney *General of the United States, as well as of his subordinate in the State of California, and was* before them for a period of five years of litigation.
The bill in this case is filed May 13, 1876, more than twenty years after the rendition of the decree which it seeks to annul. During that time, Richardson, the claimant and the man who is personally charged with the guilt of the fraud, has died, his heirs, who with himself were

claimants in the suit, are not made parties, and the land has passed from his ownership to that of the present defendants by purchase and conveyance.

It is true that the defendants are charged in general terms with being purchasers with notice. It is true that the United States is not bound by the statute of limitations as an individual would be. And we have not recited any of the foregoing matters found in the bill as sufficient of itself to prevent relief in a case otherwise properly cognizable in equity. But we think these are

good reasons why a bill which seeks under these circumstances to annul a decree thus surrounded by every presumption which should give it support shall present on its face a clear and unquestionable ground on which the jurisdiction it invokes can rest.
Let us inquire if this has been done.

III. STANDARD REVIEW

There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments. Noted there was no service on trust, tax claim file on Perelena Douce trustor decease no interest in asset prior, in court.no indictment presentments intent statue language to tax right, there was no trail or notice served on trustee, or Beneficiaries 2015, so to device private property from trust to change and control and convert for the agency financial gain by es cheat beneficiaries, birthright, violate trustee equitable party of her duty to protecting the trust no connection to state violate 5TH 14TH Amdt rights.

whether this court will R. Sec. 423.2 adhere to its decision in Munn v. Illinois, 94 U.S. 113 .

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There is also no question that many rights originally founded in fraud become – by lapse of time, by the difficulty of proving the fraud, and by the protection which the law throws around rights once established by formal judicial proceedings in tribunals established by law, *according to the methods of the law – no longer open to inquiry in the usual and ordinary* methods. Of this class are judgments and decrees of a court deciding between parties before the court and subject to its jurisdiction, in a trial which has presented the claims of the parties, and where they have received the consideration of the court.

There are no maxims of the law more firmly established or of more value in the administration of justice than the two which are designed to prevent repeated litigation between the same parties in regard to the same subject of controversy -- namely, interest rei publicae, ut sit finis litium, and nemo debet bis vexari pro una et eadam causa..

If the court has been mistaken in the law, there is a remedy by writ of error. If the jury has *been mistaken in the facts, the remedy is by motion for new trial. If there has been evidence* discovered since the trial, a motion for a new trial will give appropriate relief. But all these are parts of the same proceeding, relief is given in the same suit, and the party is not vexed by another suit for the same matter. So in a suit in chancery, on proper showing a rehearing is granted. If the injury complained of is an erroneous decision, an appeal to a higher court gives opportunity to correct the error. If new evidence is discovered after the decree has become final, a bill of review on that ground may be filed within the rules prescribed by law on that subject. Here again, these proceedings are all part of the same suit, and the rule framed for the repose of society is not violated.

AUGUMENT

This case come before this court on writ of Certiorari rule and law the courts violated discrimination deprivation trustee rights treated unfairly depart PURSUANT TO 28 USC 1738 rely on North Carolina Dept. of Revenue v. Kimberley Rice Kaestner CJS 90 Trusts, Section 162 Intention of Creator or Settler Footnote 18: Violation of intent; substitution of discretion: "Neither court nor beneficiary not legislatures competent to violate settler's intent and substitute its discretion for that of settler"-Fidelity Union Trust Co. v. Price....."Footnote 18 it further says, "Intent as law of trust: The intent, or intention, of the settler of the trust is the law of the trust.what lawful evidence this court has to

prove that this trustee has no standing FOIA produce by this court, to cover up fraudulent order with <u>improper service on wrong party</u> with no interest to the asset in trust. When this court over look, has app E pge 7 attach to brief with a copy of the lawful trust witness to testify, if was properly served violate R 1.070 applees did not file any case against decease trustor, or trustee beneficiaries, or service on trust,for that court lack personal jurisdiction in *Fla. Stat. § 197.562* 2015 was wrong party, appellees have no Fl. Stat. Intent or mandate requirement Sec.423.2c to tax this trust no connection to state, the court can not be a party to fraud to cover up agency conspiracy unclean hands to steel private property when the law exempt in violation status Fl. Stat. 196.181. void for reversal.

Page 71 U. S. 114

any party to bring the case here when the point in controversy was a matter of right, and not of discretion, and the words "either party," in order to prevent a failure of justice, must be construed as words of enlargement, and not of restriction. Although this case is here *ex parte*, it was not considered by the court below without notice having been given to the party supposed to have an interest

the writ of possession 2015 illegal unconstitutionally use to seize household goods that was defective *because it was not serve on the owner trust, Blanch Bale irrevocable living trust or notified trustee* Crystal Maye App E who live in New York, was not against Perelena Douce,prior trustor, decease, she had no interest in the asset seize,from 2009 an she was not in any business contract with the State, and there was no court filing charge procedure for any taxes lawfully due tax in any Fl. court, or rule statue by legislature intent clear language for what purpose, see Section 423.2, for a tax cannot be on a right Miranda V Arizona diversity private American was violation of fifth an fourteenth amend, no commerce license or privileges from the State, a tax assessor can not make up a tax to steel property the law say they cannot tax Fl. Stat. Sec.196.181, so the word tax use to mislead deceived for tax deed is fraud See in Redfield v. Sparks on the court vague administrative agency cannot create regulations to tax not sanctioned by congress, the law is clear See Gray V. Winthrop the lower court, and appeals court and Sup court of Fl is not following the law but color of law this why appellant demand Writ of certiorari to correct this injustic without full contest there was no hearing or trial there was no notice, to keep appellant away from contest exparte 2015 court by all officers deception agency and court to gain avantage over party the trust, because

the trust is the law See how much the appeal courts try to ignor, trustee has standing how can tax deed created on trust that cannot be tax by the state, how can state sell property iit dose *not own, or contract with there is no suit file against Perelena Douce,decease trustor or trust*

be cause there is no law that was violated for a proceedure intent to follow or enfoce, why no service was made, how can the county and its defendants by fl 197.562 writ of possession for property own by a trust who had no contract with them no trial or findings by assize jjury of our peers, no proof without the law from legislature, without a signed tax assessment under oath, the court says there no tax see holding In re Western Trading Co 340 F. Sup.1130 D.New. 1972. R. 17 appellants challenge this action the property still own by the trust owe no debt free and clear merge back in the Act of congress March 3, 1855 10 Stat. Atlarge 701 never reppeal still enfoce today language forever. 2015 writ app A sewer copy no court seal no interest defective

Taxation holding that the Kaestners' in-state residence was too tenuous a link between the State and the Trust to support the tax. "As this present case." Held: The presence of in-state beneficiaries alone does not empower a State to tax trust.

2Am Jur 2d, page 129 (1962)

Administrative Law Section 301.Particular applications. In application of the principles that the power of an administrative agency to make rules does not extend to the power to make legislation and that a regulation which is beyond the power of the agency to make is invalid, it has been held that an administrative agency may not create a criminal offense or any liability not sanctioned by the lawmaking authority, and specifically a liability for a tax [fn 2] or inspection fee. [**bold** emphasis added]

U.S. Supreme Court

Ex parte Milligan, 71 U.S. 4 Wall. 2 2 (1866)Ex parte Milligan
71 U.S. (4 Wall.) 2

Syllabus

1. Circuit Courts, as well as the judges thereof, are authorized, by the fourteenth section of the Judiciary Act, to issue the writ of habeas corpus for the purpose of inquiring into the cause of commitment, and they have

Page 71 U. S. 3

jurisdiction, except in cases where the privilege of the writ is suspended, to hear and determine the question whether the party is entitled to be discharged.

The usual course of proceeding is for the court, on the application of the prisoner for a writ of habeas corpus, to issue the writ, and, on its return, to hear and dispose of the case; but where the cause of imprisonment is fully shown by the petition, the court may, without issuing

the writ, consider and determine whether, upon the facts presented in the petition, the prisoner, if brought before the court, would be discharged.

When the Circuit Court renders a final judgment refusing to discharge the prisoner, he may bring the case here by writ of error, and, if the judges of the Circuit Court, being opposed in opinion, can render no judgment, he may have the point upon which the disagreement happens certified to this tribunal.

Military commissions organized during the late civil war, in a State not invaded and not engaged in rebellion, in which the Federal courts were open, and in the proper and unobstructed exercise of their judicial functions, had no jurisdiction to try, convict, or sentence for any criminal offense, a citizen who was neither a resident of a rebellious State nor a

prisoner of war, nor a person in the military or naval service. And Congress could not invest them with any such power.

The guaranty of trial by jury contained in the Constitution was intended for a state of war, as well as a state of peace, and is equally binding upon rulers and people at all times and under all circumstances.

The Federal authority having been unopposed in the State of Indiana, and the Federal courts open for the trial of offenses and the redress of grievances, the usages of war could not, under the Constitution, afford any sanction for the trial there of a citizen in civil life not connected with the military or naval service, by a military tribunal, for any offence whatever.

Cases arising in the land or naval forces, or in the militia in time of war or public danger, are excepted from the necessity of presentment or indictment by a grand jury, and the right of trial by jury in such cases is subject to the same exception.

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Neither the President nor Congress nor the Judiciary can disturb any one of the safeguards of civil liberty incorporated into the Constitution except so far as the right is given to suspend in certain cases the privilege of the writ of habeas corpus.

A citizen not connected with the military service and a resident in a State where the courts are *open and in the proper exercise or their jurisdiction cannot, even when the privilege of the writ* of habeas corpus is suspended, be tried, convicted, or sentenced otherwise than by the ordinary courts of law.

The case was thus:

An act of Congress — the Judiciary Act of 1789, [Footnote 1] section 14 — enacts that the Circuit Courts of the United States

"Shall have power to issue writs of habeas corpus. And that either of the justices of the Supreme Court, as well as judges of the District Court, shall have power to grant writs of habeas corpus for the purpose of an inquiry into the cause of commitment. *Provided,*"

The bill in this case is filed May 13, 1876, more than twenty years after the rendition of the decree which it seeks to annul. During that time, Richardson, the claimant and the man who is personally charged with the guilt of the fraud, has died, his heirs, who with himself were claimants in the suit, are not made parties, and the land has passed from his ownership to that of the present defendants by purchase and conveyance.

It is true that the defendants are charged in general terms with being purchasers with notice.

It is true that the United States is not bound by the statute of limitations as an individual would be. And we have not recited any of the foregoing matters found in the bill as sufficient of itself to prevent relief in a case otherwise properly cognizable in equity. But we think these are good reasons why a bill which seeks under these circumstances to annul a decree thus surrounded by every presumption which should give it support shall present on its face a clear and unquestionable ground on which the jurisdiction it invokes can rest.

Let us inquire if this has been done.

There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments.

Page 98 U. S. 65

There is also no question that many rights originally founded in fraud become -- by lapse of time, by the difficulty of proving the fraud, and by the protection which the law throws around rights once established by formal judicial proceedings in tribunals established by law, according to the methods of the law -- no longer open to inquiry in the usual and ordinary methods. Of this class are judgments and decrees of a court deciding between parties before the court and subject to its jurisdiction, in a trial which has presented the claims of the parties, and where they have received the consideration of the court.

There are no maxims of the law more firmly established or of more value in the administration of justice than the two which are designed to prevent repeated litigation between the same parties in regard to the same subject of controversy -- namely, interest *rei publicae, ut sit finis litium,* and *nemo debet bis vexari pro una et eadam causa.*

If the court has been mistaken in the law, there is a remedy by writ of error. If the jury has been mistaken in the facts, the remedy is by motion for new trial. If there has been evidence discovered since the trial, a motion for a new trial will give appropriate relief. But all these are parts of the same proceeding, relief is given in the same suit, and the party is not vexed by another suit for the same matter. So in a suit in chancery, on proper showing a rehearing is

granted. If the injury complained of is an erroneous decision, an appeal to a higher court gives opportunity to correct the error. If new evidence is discovered after the decree has become final, a bill of review on that ground may be filed within the rules prescribed by law on that subject. Here again, these proceedings are all part of the same suit, and the rule framed for the repose of society is not violated.

But there is an admitted exception to this general rule in cases where, by reason of something done by the successful party to a suit, there was in fact no adversary trial or decision of the issue in the case. Where the unsuccessful party has been prevented from exhibiting fully his case by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise, or where the

Page 98 U. S. 64

his office, the important final decree of concession was not there. The attention, therefore, of all the parties and of the court must have been drawn to a close scrutiny of any proceeding to supply this important document.

There was also ample time to make all necessary inquiries and produce the necessary proof, if it existed, of the fraud. The allegation of the bill is that this simulated concession was filed with the board of commissioners in January, 1853, and the decree rendered on December 27, thereafter. The appeal was pending after this in the district court over two years, and after the final decree in that court it remained under the consideration of the Attorney General another year, when he authorized the dismissal of the appeal. The case, then, unless these officers neglected their duties, underwent the scrutiny of two judicial tribunals and of the Attorney General of the United States, as well as of his subordinate in the State of California, and was before them for a period of five years of litigation.

The bill in this case is filed May 13, 1876, more than twenty years after the rendition of the decree which it seeks to annul. During that time, Richardson, the claimant and the man who is personally charged with the guilt of the fraud, has died, his heirs, who with himself were

claimants in the suit, are not made parties, and the land has passed from his ownership to that of the present defendants by purchase and conveyance.

It is true that the defendants are charged in general terms with being purchasers with notice.

It is true that the United States is not bound by the statute of limitations as an individual would be. And we have not recited any of the foregoing matters found in the bill as sufficient of itself to prevent relief in a case otherwise properly cognizable in equity. But we think these are good reasons why a bill which seeks under these circumstances to annul a decree thus surrounded by every presumption which should give it support shall present on its face a clear and unquestionable ground on which the jurisdiction it invokes can rest.

Let us inquire if this has been done.

There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments.

Page 71 U. S. 136

The military commission could not have jurisdiction to try and sentence Milligan if he could not be detained in prison under his original arrest or under sentence after the close of a session of the grand jury without indictment or other proceeding against him.

Indeed, the act seems to have been framed on purpose to secure the trial of all offences of *citizens by civil tribunals in states where these tribunals were not interrupted in the regular* exercise of their functions.

Under it, in such states, the privilege of the writ might be suspended. Any person regarded as dangerous to the public safety might be arrested and detained until after the session of a grand jury. Until after such session, no person arrested could have the benefit of the writ, and *even then no such person could be discharged except on such terms, as to future* appearance, as the court might impose. These provisions obviously contemplate no other trial or sentence than that of a civil court, and we could not assert the legality of a trial and sentence by a military commission, under the circumstances specified in the act and described in the petition, without disregarding the plain directions of Congress.

We agree therefore that the first two questions certified must receive affirmative answers, and the last a negative. We do not doubt that the positive provisions of the act of Congress require such answers. We do not think it necessary to look beyond these provisions. In them, we find sufficient and controlling reasons for our conclusions.

But the opinion which has just been read goes further, and, as we understand it, asserts not *only that the military commission held in Indiana was not authorized by Congress, but that it* was not in the power of Congress to authorize it, from which it may be thought to follow that Congress has no power to indemnify the officers who composed the commission against liability in civil courts for acting as members of it.

We cannot agree to this.

We agree in the proposition that no department of the

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government of the United States -- neither President, nor Congress, nor the Courts -- possesses any power not given by the Constitution.

We assent fully to all that is said in the opinion of the inestimable value of the trial by jury, and of the other constitutional safeguards of civil liberty. And we concur also in what is said of the writ of habeas corpus and of its suspension, with two reservations: (1) that, in our judgment, when the writ is suspended, the Executive is authorized to arrest, as well as to detain, and (2) that there are cases in which, the privilege of the writ being suspended, trial and punishment by military commission, in states where civil courts are open, may be authorized by Congress, as well as arrest and detention.

We think that Congress had power, though not exercised, to authorize the military commission which was held in Indiana.

We do not think it necessary to discuss at large the grounds of our conclusions. We will briefly indicate some of them.

The Constitution itself provides for military government, as well as for civil government. And we do not understand it to be claimed that the civil safeguards of the Constitution have application in cases within the proper sphere of the former.

What, then, is that proper sphere? Congress has power to raise and support armies, to provide and maintain a navy, to make rules for the government and regulation of the land and

naval forces, and to provide for governing such part of the militia as may be in the service of the United States.

It is not denied that the power to make rules for the government of the army and navy is a power to provide for trial and punishment by military courts without a jury. It has been so understood and exercised from the adoption of the Constitution to the present time.

Nor, in our judgment, does the fifth, or any other amendment, abridge that power. "Cases arising in the land and naval forces, or in the militia in actual service in time of war

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or public danger," are expressly excepted from the fifth amendment, "that no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury," and it is admitted that the exception applies to the other amendments as well as to the fifth.

Now we understand this exception to have the same import and effect as if the powers of Congress in relation to the government of the army and navy and the militia had been recited in the amendment, and cases within those powers had been expressly excepted from its operation. The states, most jealous of encroachments upon the liberties of the citizen, when proposing additional safeguards in the form of amendments, excluded specifically from their effect cases arising in the government of the land and naval forces. Thus, Massachusetts proposed that

"no person shall be tried for any crime by which he would incur an infamous punishment or loss of life until he be first indicted by a grand jury except in such cases as may arise in the government and regulation of the land forces."

Webster defines the word "cause" thus: "A suit or action in court; any legal process which a party institutes to obtain his demand, or by which he seeks his right, or supposed right" -- and he says,
"this is a legal, scriptural, and popular use of the word, coinciding nearly with case, from *cado,* and action, from *ago,* to urge and drive."

In any legal sense, action, suit, and cause, are convertible terms. Milligan supposed he had a right to test the validity of his trial and sentence, and the proceeding which he set in operation for that purpose was his "cause" or "suit." It was the only one by which he could recover his liberty. He was powerless to do more; he could neither instruct the judges nor control their action, and should not suffer, because, without fault of his, they were unable to render a judgment. But the true meaning to the term "suit" has been given by this court. One of the **questions in *Weston v. City Council of Charleston,*** [Footnote 8] **was whether a writ of prohibition was a suit, and Chief Justice Marshall says:**

"The

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term is certainly a comprehensive one, and is understood to apply to any proceeding in a court of justice by which an individual pursues that remedy which the law affords him."

But there is an admitted exception to this general rule in cases where, by reason of something done by the successful party to a suit, there was in fact no adversary trial or decision of the issue in the case. Where the unsuccessful party has been prevented from exhibiting fully his

case by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise, or where the

IV **CONCLUSION**

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Appellant Trustee never had knowledge of the suit, being kept in ignorance by the acts of the defendants, or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat, or where the attorney regularly employed corruptly sells out *his client's interest to the other side -- these and similar cases which show that there has* never been a real contest in the trial or hearing of the case are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree and open the case for a new and a fair hearing.See Wells,*Res Adjudicata,* sec. 499;*Pearce v. Olney,* 20 Conn. 544; *Wierich v. De Zoya,*7 Ill. 385; *Kent v. Ricards,* 3 Md.Ch. 392; *Smith v. Lowry,* 1 Johns. (N.Y.) Ch. 320; *De Louis v. Meek,* 2 Ia. 55.

Trinsey v Pagliaro 229,647, Ruff v Issaac. 98 US 64, 71 US 3-4.See App-A 2015 defective order that cannot be cure 28 USC 1691 as follows Authority: 28 U.S.C. 1691, 62 Stat. 945

A summons, or notice to the defendant, for the commencement of a suit, is certainly process, quite as much as a capias or a subpoena to appear and answer is process. The statute intends that all process shall issue from the court, where such process is to be held to be the action of the court, and that the evidence that it issues from the court and is the action of the court shall be the seal of the court and the signature of the clerk. ... In courts of the United States a summons cannot be amended by subsequent addition of the signature of the clerk, and the seal of the court. Citing Peaslee v. Haberstro, 15 Blatchf. 472. reversal take judicial notice.fundamental facts R.201. 20215 writ sewer service is void

In all these cases and many others which have been examined, relief has been granted on the ground that, by some fraud practiced directly upon the party seeking relief against the judgment or decree, that party has been prevented from presenting all of his case to the court

WHEREFORE appellant wish the court grant reversal the only remedy writ of certiorari to correct this wrongfull tax on trust was not authorized by Congress, and there was no service on owner trust, but that it was not in the power of Congress to authorize it, from which it may be thought to follow that Congress courts no power to indemnify the officers unclean hands.

28 USC 1746 respectfully presented

auth rep by: 3-402b

4/19/2023

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