Fraudulent Calumny—The Unanswered Questions

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Introduction

Over the past ten years or so, the plea of fraudulent calumny has emerged as a mainstay of contentious probate claims, almost on a par with testamentary capacity, want of knowledge and approval and undue influence. But for all its popularity, the precise components of fraudulent calumny, its relationship with other kinds of fraud and the remedies available have yet to be worked out.

This article started as an attempt to fill in some of the gaps, but in fact concludes that fraudulent calumny entered the legal lexicon as a construct of textbook writers and is only an example of a more general plea of fraud.

The modern origin

Fraudulent calumny began its recent rise in *Edwards*,[1] which offered the following statement of the law:

> "There is a separate ground for avoiding a testamentary disposition on the ground of fraud. The shorthand used to refer to this species of fraud is 'fraudulent calumny'. The basic idea is that if A poisons the testator's mind against B, who would otherwise be a natural beneficiary of the testator's bounty, by casting dishonest aspersions on his character, then the will is liable to be set aside."
>
> "The essence of fraudulent calumny is that the person alleged to have been poisoning the testator's mind must either know that the aspersions are false or not care whether they are true or false. In my judgment if a person believes that he is telling the truth about a potential beneficiary then even if what he tells the testator is objectively untrue, the will is not liable to be set aside on that ground alone …"[2]

The apparent gaps in that formulation are these.

(1) The name of the plea, and the way it was cast in *Edwards*, make it clear that the testator must have been induced to form a negative impression of the calumniated beneficiary. But what if the testator has been led to form an incorrect impression that is neutral or positive? For example, a testator might be tricked into thinking that their intended beneficiary is extremely wealthy, and so decide to leave their estate to someone else.

(2) What does it mean to be a "natural object of the testator's bounty"? The test could be an objective one—certain persons are always natural, like spouses and children—or subjective, so the circumstances are key.

(3) Must the testator be induced to believe something false, or is it enough that a misapprehension is dishonestly left uncorrected?

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[1] *Re Edwards (Deceased)* [2007] EWHC 1119 (Ch); [2007] W.T.L.R. 1387 ("*Edwards*"), a decision of Lewison J.

[2] *Edwards* [2007] W.T.L.R. 1387 at [47(vii), (viii)].

(4) Is it necessary to show that the calumniator's intention was to interfere with the will, or is it enough to show that the will was the result of the false statement?

(5) Does fraudulent calumny invalidate the whole will or only part of it, and are there any other available remedies?

The earlier cases

The elements of the plea of fraudulent calumny, as expressed in *Edwards*, are drawn from two cases: *Allen v M'Pherson*[3] and *Boyse v Rossborough*,[4] with most taken from the latter.

The case in *Allen* was that the testator's son and daughter had "concocted a report containing various false representations of the appellant's character and manner of life", that they had read it to him and thus induced him to execute a codicil substantially reducing the appellant's entitlement under a will and previous codicils. The appellant was a great nephew of the testator.

Lord Lyndhurst gave the first speech, and it is an extract from it that provides the root of fraudulent calumny as it is now understood:

> "There cannot be a stronger instance of fraud than a false representation respecting the character of an individual to a weak old man, for the purpose of inducing him to revoke a bequest made in favour of the person so calumniated."[5]

That statement was based, at least in part, on *Butterfield v Scawen*, an unreported case from 1775, in which it had been held as follows.

> "If it should appear, as in the case stated by your Lordships, that an old and infirm testator who had bequeathed a legacy to A.B., had been induced by false and fraudulent representations with reference to the conduct of A.B., made to him for the purpose by C.D., to make a subsequent codicil revoking that bequest, and substituting for it a much smaller legacy, the effect of which would be to give a larger share of the residue to C.D. than he otherwise would take, I conceive that the Ecclesiastical Court would not, under such circumstances, grant probate of such revoking codicil, provided it should be clearly established in point of evidence that such act and intention were produced by such false and fraudulent representations."[6]

The content of fraudulent calumny was not in issue in *Allen*. Rather, the appeal concerned the jurisdictions of the Ecclesiastical Courts, which admitted wills of personalty to probate, and the Court of Chancery, which could declare the existence of trusts and grant equitable remedies. This article returns to those matters later. For now, it is enough to note that Lord Lyndhurst was referring to the facts alleged in the case—which had to be accepted as true, because the jurisdiction point was addressed on demurrer—and was describing them only as an example of fraud.

In *Boyse*, the allegations were fourfold. First, it was said that the testator lacked testamentary capacity. Second, his wife was accused of having procured him to execute a will by trickery. Third, she was accused of having estranged the testator from his family. Finally, it was alleged that the testator had been coerced into executing his will. The key part of Lord Cranworth LC's speech is this:

> "If a wife, by falsehood, raises prejudices in the mind of her husband against those who would be the natural objects of his bounty, and by contrivance keeps him from intercourse with his relatives, to the end that these impressions which she knows he had thus formed to their disadvantage may never be removed, such contrivance may, perhaps, be equivalent to positive fraud, and may render

[3] *Allen v M'Pherson* (1847) 1 H.L. Cas. 191; 9 E.R. 727 ("*Allen*").
[4] *Boyse v Rossborough* (1857) 6 H.L. Cas. 2; 11 E.R. 1192 ("*Boyse*").
[5] *Allen* (1847) 9 E.R. 727, 735.
[6] *Butterworth v Scawen*, unreported, 1775, cited in *Allen* (1847) 9 E.R. 727, 735.

> invalid any will executed under false impressions thus kept alive. It is, however, extremely difficult to state in the abstract what acts will constitute undue influence in questions of this nature."[7]

Later on in his speech, the Lord Chancellor said:

> "The most I can find, if indeed that can be found, is evidence to show that the act done was consistent with the hypothesis of undue influence; that the instrument, though apparently the expression of his genuine will, might in truth have been executed only in compliance with the threats or commences of his wife, *or that he had been led to execute it by unfounded prejudices artfully instilled into or cherished in his mind by his wife against those who would otherwise have been the probable objects of his bounty*."[8] (Emphasis added)

Elsewhere, the Lord Chancellor mentioned "fraud" and "fraudulent misrepresentations".[9]

The textbooks

The term "fraudulent calumny" does not appear in the earlier cases and seems to have been coined in what is now *Williams, Mortimer & Sunnucks on Executors, Administrators and Probate*.

The second edition of *Mortimer on the Law and Practice of the Probate Division of the High Court of Justice* includes a section on wills obtained by fraud.[10] The text quotes Lord Lyndhurst's statement, with a citation to *Allen*, but does not seek to identify fraudulent calumny as a plea separate from fraud. The same passage from *Allen* is quoted in the then-newly merged *Williams, Mortimer & Sunnucks*, in the Fraud section, under the heading "Fraudulent calumniation".[11] It was only in the sixteenth edition that the term "fraudulent calumny" appeared for the first time.[12] Other textbooks of the time do not use the term or seek to distinguish fraudulent calumny from fraud more generally.

After *Edwards*

Several cases have followed *Edwards*, of which only two have considered the legal test in more detail.

The first is *Kunicki v Hayward*.[13] There Mr Recorder Klein broke down the plea into these elements, substituting the names of the parties for their roles:

- that [the calumniator] made a false representation;
- to the testator;
- about [a potential beneficiary's] character;
- for the purpose of inducing [the testator] to alter [their] testamentary dispositions;
- that [the calumniator] made such a representation knowing it to be untrue or being reckless as to its truth; and
- that the [will] was made only because of the fraudulent calumny.

[7] *Boyse* (1857) 11 E.R. 1192, 1211.
[8] *Boyse* (1857) 11 E.R. 1192, 1212.
[9] *Boyse* (1857) 11 E.R. 1192, 1209.
[10] C. Mortimer (ed.) *Mortimer on the Law and Practice of the Probate Division of the High Court of Justice*, 2nd edn (London: Sweet & Maxwell, Stevens & Sons, 1927), p.*.
[11] J. H. G. Sunnucks (ed.) *Williams, Mortimer & Sunnucks on Executors, Administrators and Probate*, 15th edn (London: Stevens & Sons, 1970) p.*.
[12] J. H. G. Sunnucks, J. Ross Martyn and K. Garnett (eds) *Williams, Mortimer & Sunnucks on Executors, Administrators and Probate*, 16th edn (London: Stevens & Sons, 1982), p.*.
[13] *Kunicki v Hayward* [2016] EWHC 3199 (Ch); [2017] 4 W.L.R. 32.

Two of those points were considered subsequently in *Christodoulides v Marcou*[14] on an application for permission to appeal heard by Morgan J. Those were the purpose that had to be proved and the causation element.

The appellant first contended that it had to be shown that the calumniator's purpose in making false representations was to cause the testator to alter their testamentary intentions. The appellant cited *Allen* and *Boyse* in support of that submission. As to *Allen*, Morgan J noted that it was arguable that Lord Lyndhurst's statement referred only to the case before the House, but also accepted that *Butterfield v Scawen* included the purpose of the representations among its ingredients. Turning next to *Boyse*, Morgan J identified two statements of Lord Cranworth LC that pointed to a purpose focused on changing the testator's testamentary intentions.

Ultimately, Morgan J left the purpose point open because it had not been taken at trial. Permission to appeal on that ground was refused.

The second point on which the appellant sought to rely was on causation: did the testator form their intentions *only* because of the fraudulent misrepresentations? There, Morgan J was definitive: it was enough that the calumny was proved on the balance of probabilities to have caused or induced the change. He held that—

> "… the use of the word 'only' should not be understood as requiring a finding that there must have been no other reason operating in conjunction with the effect of the fraud for the testator to change his or her intentions."[15]

There was no real prospect of success on that ground, because of the findings of fact at first instance.

Kunicki v Hayward has since been followed,[16] including on those two points, no doubt because *Christodoulides* was a permission to appeal application, and thus not citable as authority.

Breaking down the elements

Conduct and character

The history of fraudulent calumny shows that it was not a plea in itself separate from fraud generally. Lord Lyndhurst in *Allen* introduced his own statement as an "instance" of fraud, which sets it in the wider context of fraud more generally. Likewise, the extract from *Butterfield v Scawen* appears to have responded to the case stated, rather than laying down a proposition of law: fraudulent calumny is unlikely to be confined to old and infirm testators, for example, nor only to codicils. False and fraudulent representations must lie at the heart of it, but the judge in *Butterfield* did not go further than to refer to the "conduct" of the subject of the false representations. The conduct in that case had been discreditable—an alleged attempt to poison the testator—but the judge did not elaborate on the nature of the conduct required to be shown.

In *Boyse* the Lord Chancellor referred to "prejudices" and "impressions … to [the victims'] disadvantage", which is more clearly a reference to a negative false belief.[17] Again, though, Lord Cranworth appears to have been dealing with the facts of the case before him and not laying down wider principles of law.

Since the cases were decided on their own facts, it is hard to see that the false representation must be a pejorative one as a general rule. Other cases have recognised that a legacy to a supposed spouse may fail where the character of spouse has been falsely assumed. Thus in *Kennell v Abbott*[18] a woman had left a legacy to a man she thought was her husband, when in fact the supposed marriage was bigamous. That

[14] *Christodoulides v Marcou* [2017] EWHC 2632 (Ch); [2020] W.T.L.R. 883.
[15] *Christodoulides* [2020] W.T.L.R. 883 at [59].
[16] *St Clair v King* [2022] EWHC 40 (Ch); [2022] W.T.L.R. 703; *Re Dale (Deceased)* [2022] EWHC 2462 (Ch).
[17] *Boyse* (1857) 11 E.R. 1192, 1211.
[18] *Kennell v Abbott* (1799) 4 Ves. Jr. 802; 31 E.R. 416.

case was followed in *Posner*,[19] where it was the putative wife who was alleged to have contracted a bigamous marriage. In each case it was the fraud rather than any negative connotation that undermined the gift.

Thus, in this author's view it is sufficient that a false representation is made. It does not have to be a negative statement about the subject's conduct or character or lead to a "poisoning of the mind" in the sense of generating ill-will. In the example given at the beginning of this article, A tells T that B (who would otherwise benefit) is already very wealthy. It is suggested that, if that representation were false, it would provide the basis to contest a will that was made as a result, even though being wealthy is not normally a negative.

Natural objects

The element of the test concerning a "natural beneficiary", as in the formulation in *Edwards*, is drawn from Lord Cranworth's speech in *Boyse*. It was not part of the other early cases. Properly understood in context, the Lord Chancellor was not stating a general rule, but evaluating the evidence.

In order to test whether a fraudulent statement had had any effect, one must look at the counterfactual—what would have happened in the absence of the statement? In some cases, that may be a simple question of looking at a prior will or codicil and inferring that the prior provision would have been left unchanged. In other cases it may be possible to identify an intention to benefit a particular person, perhaps from instructions given to a solicitor, that later changed so as not to benefit them. But in some cases, where there were particular persons who might have been expected to benefit, but who did not, that expectation may inform the court's fact-finding about whether a fraud has been practised.

If that is right, then no element requires a person to have been a natural object; at most, a given person's circumstances and relationship to the testator might be information for the court to consider.

Non-correction of false impression

The seed for this potential ground comes from *Boyse*, where the wife was alleged to have kept the testator from seeing his relatives and so deprived him of the opportunity to correct his false impression. Lord Cranworth held that those facts might amount to positive fraud. Could that holding apply more widely?

The starting point here is that the principles under consideration appear to have been common law ones: the Lord Chancellor was examining whether a will might be invalid at that point, rather than whether a trust might have arisen. At common law, as matters currently stand, mere non-disclosure is not usually enough to set up a fraud, whether in the tort of deceit or in seeking to avoid a contract for misrepresentation.

Thus, in the classic case of *Smith v Hughes*,[20] Cockburn CJ held that "the passive acquiescence of the seller in the self-deception of the buyer" would not entitle the latter to avoid the contract.[21] Blackburn J held similarly, "whatever may be the case in a court of morals".[22] Each referred to exceptions that still hold true today: where there is a legal obligation to disclose, a failure to do so may ground an action; and where the mistake is induced by the act of the non-mistaken party, there may also be an obligation to disclose.

In addition to those two exceptions, non-disclosure may amount to fraud where the parties are in a fiduciary relationship. So, in *Conlon v Simms*[23] there was a duty of disclosure to a fellow-partner arising out of the fiduciary relationship between partners.

[19] *In the Estate of Posner* [1953] P. 277; [1953] 1 All E.R. 1123.
[20] *Smith v Hughes* (1870–71) L.R. 6 Q.B. 597; (1871) 19 W.R. 1059.
[21] *Smith* (1870–71) L.R. 6 Q.B. 597, 603.
[22] *Smith* (1870–71) L.R. 6 Q.B. 597, 607.
[23] *Conlon v Simms* [2006] EWHC 401 (Ch); [2006] 2 All E.R. 1024.

Going back to *Boyse*, Lord Cranworth's statement recognised that the allegation included the suggestion that wife had raised the prejudices in the first place. Any non-disclosure that followed would be coupled with the initial falsehood, and so contribute to a finding of fraud.

Another potential avenue, hinted at by the fact that it was a wife's conduct at issue in the case, is that it might be possible to draw on some of the undue influence and abuse of confidence cases. That raises the question about the availability of equitable remedies, which is dealt with below.

The fraudster's purpose

In *Allen* Lord Lyndhurst addressed the necessary purpose: "inducing him to revoke a bequest".[24] Purpose was not covered in *Edwards*, but Lord Lyndhurst's statement may have led to the narrow expression of the test in *Kunicki* along similar lines: for the purpose of inducing the testator to alter their testamentary dispositions.

The question here is whether the purpose is any wider than that. For example, a fraudster may falsely blacken the victim's name to dissuade the testator from making a lifetime gift. If the testator then makes a codicil excluding the victim from benefit under an existing will, is the codicil invalid?

In *Peek v Gurney*, decided 30 years after *Allen*, Lord Cairns tested the causation aspect of deceit and gave this example:

> "I put the case of a person having built a house and desiring to sell it. He comes to me and wishes me to purchase it; he describes it as a highly advantageous purchase, and makes statements of fact to me with regard to the house which are untrue and are misrepresentations; but I decline to purchase, and our overtures come to an end. He subsequently sells it to some other person, upon what terms I know not. That other person completes the purchase, and that other person, desiring to raise money on mortgage, applies to me to lend him money. I lend him money upon a mortgage of the house. The facts stated to me originally turn out to be untrue, and are so material as that the house, not being as represented, becomes comparatively worthless. I then apply to the original vendor, remind him of what he told me, and complain to him that my money lent upon mortgage has been lost, and I commence an action against him for damages to recover my loss. I ask, could such an action be maintained? I know of no authority for it, and I am of opinion that an action of that kind would not lie."[25]

Thus, at the time *Allen* was decided, not every consequence of a fraud was actionable, even though caused by the falsehood, if the consequence was outside the fraudster's purpose. *Peek v Gurney* was followed in *Bradford BS v Borders*, Lord Maugham holding that the representation "must be made with the intention that it should be acted upon by the plaintiff, or by a class of persons which will include the plaintiff, in the manner which resulted in damage to him".[26]

But those cases were distinguished by the Court of Appeal in *Goose v Wilson Sandford & Co*.[27] There, it was held that the apparent restriction applied only where the fraudulent misrepresentation was made to someone other than the person deceived. In a case of fraudulent calumny, the testator is the person deceived. Normally, it is enough that the representor should intend to deceive the representee with the intent that the statement be acted on by them. Fraudulent calumny should be no different.

If—as this author suggests—fraudulent calumny is to be properly understood only as a species of fraud operating on common law principles, then the requirements should evolve with the common law. Thus, it is too restrictive to say that the fraudster's intent should be directed at the testamentary dispositions; it

[24] *Allen* (1847) 9 E.R. 727, 735.
[25] *Peek v Gurney* (1873) L.R. 6 H.L. 377, 411–412.
[26] *Bradford Third Equitable Benefit Building Society v Borders* [1941] 2 All E.R. 205.
[27] *Goose v Wilson Sandford & Co* [2001] Lloyd's Rep. P.N. 189.

should be enough that the fraudster intended the testator to act on the representations. That may often involve a testamentary instrument, but that may not be true in every case.

Causation the only test?

The final element set out in *Kunicki* was that the testamentary instrument was made *only* because of the fraudulent calumny. As Morgan J explained in *Christodoulides*, that requirement appears to stem from an interpretation of Lord Cranworth LC's speech in *Boyse*, holding that it was insufficient to show that the circumstances of execution were consistent with undue influence; it had to be shown that they were inconsistent with a contrary hypothesis.

The Court of Appeal, in the context of undue influence, has watered down that test, affirming that proof is only on the balance of probabilities. So, even if it applies, it is not as stringent as stated in *Kunicki*. In *Rea v Rea* Newey LJ held:

> "I would accept that undue influence can be proved without demonstrating that the circumstances are necessarily inconsistent with any alternative hypothesis. On the other hand, the circumstances must be such that undue influence is more probable than any other hypothesis. If another possibility is just as likely, undue influence will not have been established. When making that assessment, moreover, it may well be appropriate to proceed on the basis that undue influence is inherently improbable."[28]

Returning to causation, the common law has long recognised that a fraudulent misstatement need not be the sole cause of loss in a claim in deceit: "It is not necessary to shew that the misstatement was the sole cause of his acting as he did".[29] The principle was approved more recently by the House of Lords in *Standard Chartered Bank v Pakistan National Shipping Corp*.[30] There is no reason to impose a more exacting standard in fraudulent calumny cases.

Remedies

The remedy when other pleas are upheld tends to be to refuse probate of the whole will or codicil affected. Thus, if a testator lacks mental capacity, the entire will is invalid; the court does not go through it to identify which parts may have been good and which bad. But that is not always so. In *Rhodes v Rhodes*[31] it was recognised that if part of a will had been introduced by fraud or, perhaps, inadvertence, probate could be refused of that part. And as Lord Neuberger noted in *Marley v Rawlings*,[32] refusal of probate could be used to rectify wills before the official introduction of rectification by the Administration of Justice Act 1982.

So much was recognised in *Allen*, which largely concerned the interface between common law remedies available in courts of probate (then the Ecclesiastical Courts for movables and the King's or Queen's Bench for immovables) and the equitable remedies available in the Court of Chancery. In *Allen*, the whole appeal seems to have sprouted from a misapprehension about the Ecclesiastical Court's jurisdiction, which for procedural reasons could not be challenged.

The proceedings in Chancery started with a bill, which alleged that—

[28] *Rea v Rea* [2024] EWCA Civ 169 at [32].
[29] *Edgington v Fitzmaurice* (1885) 29 Ch. D. 459 per Cotton LJ.
[30] *Standard Chartered Bank v Pakistan National Shipping Corp* (No.2) [2003] 1 A.C. 959; [2002] 3 W.L.R. 1547.
[31] *Rhodes v Rhodes* (1882) 7 App. Cas. 192.
[32] *Marley v Rawlings* [2014] UKSC 2; [2015] A.C. 129.

> "… the appellant was confined in the Prerogative Court to grounds of objection which affected the codicil as an entire instrument, and was not permitted to go into the case stated in the bill, or into any other case solely relating to the parts of the codicil which affected only the appellant."[33]

The response to the bill was a demurrer. Much like a modern-day application for summary judgment or striking-out, on a demurrer it had to be assumed that the facts stated in the bill were correct; only principles of law could be argued. So the courts had to assume that the Ecclesiastical Court had indeed ruled as alleged.

In fact, as Lord Lyndhurst held, it was—

> "… perfectly clear that the Ecclesiastical Court may admit a part of an instrument to probate and refuse it as to the rest … It is, in fact, the constant practice of the Court … The matter should have been set right on appeal."[34]

Even so, he acknowledged that the matter was before the House of Lords—where appeals from Chancery ultimately lay—and not the Privy Council, the apex of ecclesiastical appeals.

The interaction with equitable remedies was the subject of a 3:2 split. Lords Lyndhurst, Brougham and Campbell were in the majority. They held broadly that where there was a remedy available in probate, there was no room for an equitable remedy in Chancery. Thus, Lord Lyndhurst held that the Court of Chancery would only interfere where the Court of Probate could "afford no adequate or proper remedy", to allow otherwise would be to set up the Court of Chancery as an appellate court from the Ecclesiastical Courts.[35]

Lord Brougham was more explicit:

> "How, in the case of a great fraud being practised by one party against another, the effect of which may be to swell the residue, is the Court of Chancery ever to get at that fraud, if probate of the instrument has been refused by the Ecclesiastical Court? That is very true, but in all such cases, if the judge of the Court of Probate sees reason to suspect that there ought to be relief in respect of fraud, a judicious mind would naturally lean towards granting probate, in order that case might come before a Court of Equity, whereas it never could if the probate were refused. I should say that if the Court of Probate has not the power of giving relief, the judge there is bound to grant probate, in order that those who have the power may be able to exercise it, and grant redress."[36]

Lord Campbell held similarly:

> "… I take this distinction; where the Ecclesiastical Court cannot do justice by the powers belonging to it, probate must be granted; it is not a Court of construction, and it must confine itself within its own limits; in certain cases it must grant probate, and refer the parties for justice to a Court of Equity; but if the Ecclesiastical Court in any particular case can do ample justice by granting or refusing a probate, then after the decree of the Ecclesiastical Court there is no remedy in the Court of Chancery."[37]

Nowadays, law and equity have been fused and contentious probate business has been assigned to the Chancery Division. Even so, the underlying principle appears sound: if the court can achieve justice by refusing probate, wholly or partly, then that is all that need be done. But if that is insufficient, then equity may intervene.

In some jurisdictions in the US, courts have recognised a tort of "interference with an expectation of inheritance". In California, on the other hand, such a tort has been rejected following similar reasoning

[33] *Allen* (1847) 9 E.R. 727, 736.
[34] *Allen* (1847) 9 E.R. 727, 736.
[35] *Allen* (1847) 9 E.R. 727, 737.
[36] *Allen* (1847) 9 E.R. 727, 742.
[37] *Allen* (1847) 9 E.R. 727, 747.

to that in *Allen*. In *Munn v Briggs* the California Court of Appeal upheld a demurrer to an action in tort when the plaintiff had an adequate remedy in probate.[38]

Conclusion

Understood in their proper context, the pre-*Edwards* cases were dealing with individual frauds. The nature of will-making means that a particular mode of fraud—making false statements about a potential beneficiary—has happened often enough to have come before the court several times. Those cases have since been drawn together and treated as representing a free-standing principle of law.

In fact, fraudulent calumny is not a free-standing plea, but part of a more general plea of fraud. Fraud here is to be understood as following common law principles, as those principles have evolved, with such flexibility as the common law permits. The restrictions placed around fraudulent calumny in the post-*Edwards* cases are not justified by precedent or principle.

Despite the fundamental common law base for fraud in probate cases, there is still room for equity. If refusal of probate, wholly or partly, is enough to do justice, then that is the remedy. But otherwise, probate may be granted, followed by equitable relief.

[38] *Munn v Briggs* (2010) 185 Cal. App. 4th 578.