and opinions of the Supreme Court of Oklahoma in the *Wilson* and later cases.

So ordered.

HAZEL-ATLAS GLASS CO. *v.* HARTFORD-EMPIRE CO.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

No. 398. Argued February 9, 10, 1944.—Decided May 15, 1944.

Upon appeal from a judgment of the District Court denying relief in a suit by Hartford against Hazel for infringement of a patent, the Circuit Court of Appeals in 1932 held Hartford's patent valid and infringed, and upon its mandate the District Court entered judgment accordingly. In 1941, Hazel commenced in the Circuit Court of Appeals this proceeding, wherein it conclusively appeared that Hartford, through publication of an article purporting to have been written by a disinterested person, had perpetrated a fraud on the Patent Office in obtaining the patent and on the Circuit Court of Appeals itself in the infringement suit. Upon review here of an order of the Circuit Court of Appeals denying relief, *held:*

1. Upon the record, the Circuit Court of Appeals had the power and the duty to vacate its 1932 judgment and to give the District Court appropriate directions. P. 247.

(a) Even if Hazel failed to exercise due diligence to uncover the fraud, relief may not be denied on that ground alone, since public interests are involved. P. 246.

(b) In the circumstances, Hartford may not be heard to dispute the effectiveness nor to assert the truth of the article. P. 247.

2. The Circuit Court of Appeals is directed to set aside its 1932 judgment, recall its 1932 mandate, dismiss Hartford's appeal, and to issue a mandate to the District Court directing it to set aside its judgment entered pursuant to the 1932 mandate, to reinstate its original judgment denying relief to Hartford, and to take such additional action as may be necessary and appropriate. P. 250.

137 F. 2d 764, reversed.

CERTIORARI, 320 U. S. 732, to review an order of the Circuit Court of Appeals denying relief in a bill of review proceeding commenced in that court.

Mr. Stephen H. Philbin, with whom *Mr. Henry R. Ashton* was on the brief, for petitioner.

Mr. Francis W. Cole, with whom *Messrs. Walter J. Blenko, Edgar J. Goodrich,* and *James M. Carlisle* were on the brief, for respondent.

Solicitor General Fahy, Assistant Attorney General Shea, and *Messrs. Robert L. Stern* and *Melvin Richter* filed a brief on behalf of the United States, as *amicus curiae,* urging reversal.

MR. JUSTICE BLACK delivered the opinion of the Court.

This case involves the power of a Circuit Court of Appeals, upon proof that fraud was perpetrated on it by a successful litigant, to vacate its own judgment entered at a prior term and direct vacation of a District Court's decree entered pursuant to the Circuit Court of Appeals' mandate.

Hazel-Atlas commenced the present suit in November, 1941, by filing in the Third Circuit Court of Appeals a petition for leave to file a bill of review in the District Court to set aside a judgment entered by that Court against Hazel in 1932 pursuant to the Third Circuit Court of Appeals' mandate. Hazel contended that the Circuit Court of Appeals' judgment had been obtained by fraud and supported this charge with affidavits and exhibits. Hartford-Empire, in whose favor the challenged judgment had been entered, did not question the appellate court's power to consider the petition, but filed counter affidavits and exhibits. After a hearing the Circuit Court concluded that since the alleged fraud had been practiced on it rather than the District Court it would pass on the

issues of fraud itself instead of sending the case to the District Court. An order was thereupon entered denying the petition as framed but granting Hazel leave to amend the prayer of the petition to ask that the Circuit Court itself hear and determine the issue of fraud. Hazel accordingly amended, praying that the 1932 judgments against it be vacated and for such other relief as might be just. Hartford then replied and filed additional exhibits and affidavits. The following facts were shown by the record without dispute.

In 1926 Hartford had pending an application for a patent on a machine which utilized a method of pouring glass into molds known as "gob feeding." The application, according to the Circuit Court, "was confronted with apparently insurmountable Patent Office opposition." To help along the application, certain officials and attorneys of Hartford determined to have published in a trade journal an article signed by an ostensibly disinterested expert which would describe the "gob feeding" device as a remarkable advance in the art of fashioning glass by machine. Accordingly these officials prepared an article entitled "Introduction of Automatic Glass Working Machinery; How Received by Organized Labor," which referred to "gob feeding" as one of the two "revolutionary devices" with which workmen skilled in bottle-blowing had been confronted since they had organized. After unsuccessfully attempting to persuade the President of the Bottle Blowers' Association to sign this article, the Hartford officials, together with other persons called to their aid, procured the signature of one William P. Clarke, widely known as National President of the Flint Glass Workers' Union. Subsequently, in July 1926, the article was published in the National Glass Budget, and in October 1926 it was introduced as part of the record in support of the pending application in the Patent Office.

January 3, 1928, the Patent Office granted the application as Patent No. 1,655,391.

On June 6, 1928, Hartford brought suit in the District Court for the Western District of Pennsylvania charging that Hazel was infringing this "gob feeding" patent, and praying for an injunction against further infringement and for an accounting for profits and damages. Without referring to the Clarke article, which was in the record only as part of the "file-wrapper" history, and which apparently was not then emphasized by counsel, the District Court dismissed the bill on the ground that no infringement had been proved. 39 F. 2d 111. Hartford appealed. In their brief filed with the Circuit Court of Appeals, the attorneys for Hartford, one of whom had played a part in getting the spurious article prepared for publication, directed the Court's attention to "The article by Mr. William Clarke, former President of the Glass Workers' Union." The reference was not without effect. Quoting copiously from the article to show that "labor organizations of practical workmen recognized" the "new and differentiating elements" of the "gob feeding" patent owned by Hartford, the Circuit Court on May 5, 1932, held the patent valid and infringed, reversed the District Court's judgment, and directed that court to enter a decree accordingly. 59 F. 2d 399, 403, 404.

At the time of the trial in the District Court in 1929, where the article seemingly played no important part, the attorneys of Hazel received information that both Clarke and one of Hartford's lawyers had several years previously admitted that the Hartford lawyer was the true author of the spurious publication. Hazel's attorneys did not at that time attempt to verify the truth of the hearsay story of the article's authorship, but relied upon other defenses which proved successful. After the opinion of the Circuit Court came down on May 5, 1932, quoting the spurious

article and reversing the decree of the District Court, Hazel hired investigators for the purpose of verifying the hearsay by admissible evidence. One of these investigators interviewed Clarke in Toledo, Ohio, on May 13 and again on May 24. In each interview Clarke insisted that he wrote the article and would so swear if summoned. In the second interview the investigator asked Clarke to sign a statement telling in detail how the article was prepared, and further asked to see Clarke's files. Clarke replied that he would not "stultify" himself by signing any "statement or affidavit"; and that he would show the records to no one unless compelled by a subpoena. At the same time, he reinforced his claim of authorship by asserting that he had spent seven weeks in preparing the article.

But unknown to Hazel's investigator, a representative of Hartford, secretly informed of the investigator's view that Hazel's only chance of reopening the case "was to get an affidavit from someone, to the effect that this article was written" by Hartford's attorney, also had traveled to Toledo. Hartford's representative first went to Toledo and talked to Clarke on May 10, three days before Hazel's investigator first interviewed Clarke; and he returned to Toledo again on May 22 for a five-day stay. Thus at the time of the investigator's second interview with Clarke on May 24, representatives of both companies were in touch with Clarke in Toledo. But though Hartford's representative knew the investigator was there, the latter was unaware of the presence of the Hartford representative. On May 24, Hazel's investigator reported failure; the same day, Hartford's man reported "very successful results." Four days later, on May 28, Hartford's representative reported his "success" more fully. Clarke, he said, had been of "great assistance" and Hartford was in a "most satisfactory position"; it did not "seem wise to distribute copies of all the papers" the representative then had or

to "go into much detail in correspondence"; and Hartford was "quite indebted to Mr. Clarke" who "might easily have caused us a lot of trouble. This should not be forgotten. . . ." Among the "papers" which the representative had procured from Clarke was an affidavit signed by Clarke stating that he, Clarke, had "signed the article and released it for publication." The affidavit was dated May 24—the very day that Clarke had told Hazel's investigator he would not "stultify" himself by signing any affidavit and would produce his papers for no one except upon subpoena.

Shortly afterward Hazel capitulated. It paid Hartford $1,000,000 and entered into certain licensing agreements. The day following the settlement, Hartford's representative traveled back to Toledo and talked to Clarke. At this meeting Clarke asked for $10,000. Hartford's representative told him that he wanted too much money and that Hartford would communicate with him further. A few days later the representative paid Clarke $500 in cash; and about a month later delivered to Clarke, at some place in Pittsburgh which he has sworn he cannot remember, an additional $7,500 in cash. The reason given for paying these sums was that Hartford felt a certain moral obligation to do so, although Hartford's affidavits deny any prior agreement to pay Clarke for his services in connection with the article.

Indisputable proof of the foregoing facts was, for the first time, fully brought to light in 1941 by correspondence files, expense accounts and testimony introduced at the trial of the *United States* v. *Hartford-Empire Company et al.*, 46 F. Supp. 541, an anti-trust prosecution begun December 11, 1939. On the basis of the disclosures at this trial Hazel commenced the present suit.

Upon consideration of what it properly termed this "sordid story," the Circuit Court, one Judge dissenting, held, first, that the fraud was not newly discovered; sec-

ond, that the spurious publication, though quoted in the 1932 opinion, was not the primary basis of the 1932 decision; and third, that in any event it lacked the power to set aside the decree of the District Court because of the expiration of the term during which the 1932 decision had been rendered. Accordingly the Court refused to grant the relief prayed by Hazel.

Federal courts, both trial and appellate, long ago established the general rule that they would not alter or set aside their judgments after the expiration of the term at which the judgments were finally entered. *Bronson* v. *Schulten*, 104 U. S. 410. This salutary general rule springs from the belief that in most instances society is best served by putting an end to litigation after a case has been tried and judgment entered. This has not meant, however, that a judgment finally entered has ever been regarded as completely immune from impeachment after the term. From the beginning there has existed alongside the term rule a rule of equity to the effect that under certain circumstances, one of which is after-discovered fraud, relief will be granted against judgments regardless of the term of their entry. *Marine Insurance Co.* v. *Hodgson*, 7 Cranch 332; *Marshall* v. *Holmes*, 141 U. S. 589. This equity rule, which was firmly established in English practice long before the foundation of our Republic, the courts have developed and fashioned to fulfill a universally recognized need for correcting injustices which, in certain instances, are deemed sufficiently gross to demand a departure from rigid adherence to the term rule. Out of deference to the deep-rooted policy in favor of the repose of judgments entered during past terms, courts of equity have been cautious in exercising their power over such judgments. *United States* v. *Throckmorton*, 98 U. S. 61. But where the occasion has demanded, where enforcement of the judgment is "manifestly unconscionable," *Pickford* v. *Talbott*, 225 U. S. 651, 657, they have wielded the power without hesitation.[1] Litigants who have sought to invoke this equity power customarily have done so by bills of review or bills in the nature of bills of review, or by original proceedings to enjoin enforcement of a judgment.[2] And in cases where courts have exercised the power, the relief granted has taken several forms: setting aside the judgment to permit a new trial, altering the terms of the judgment, or restraining the beneficiaries of the judgment from taking any benefit whatever from it.[3] But whatever form the relief has taken in particular cases, the net result in every case has been the same: where the situation has required, the court has, in some manner, devitalized the judgment even though the term at which it was entered had long since passed away.

Every element of the fraud here disclosed demands the exercise of the historic power of equity to set aside fraudulently begotten judgments. This is not simply a case of a judgment obtained with the aid of a witness who, on the basis of after-discovered evidence, is believed possibly to have been guilty of perjury. Here, even if we consider nothing but Hartford's sworn admissions, we find a deliberately planned and carefully executed scheme to defraud not only the Patent Office but the Circuit Court of Ap-

[1] See, e. g., *Art Metal Works* v. *Abraham & Strauss*, 107 F. 2d 940 and 944; *Publicker* v. *Shallcross*, 106 F. 2d 949; *Chicago, R. I. & P. Ry. Co.* v. *Callicotte*, 267 F. 799; *Pickens* v. *Merriam*, 242 F. 363; *Lehman* v. *Graham*, 135 F. 39; *Bolden* v. *Sloss-Sheffield Steel & Iron Co.*, 215 Ala. 334, 110 So. 574, 49 A. L. R. 1206. For a collection of early cases see Note (1880) 20 Am. Dec. 160.

[2] See *Whiting* v. *Bank of the United States*, 13 Pet. 6, 13; *Dexter* v. *Arnold*, 5 Mason 303, 308–315. See, also, generally, 3 Ohlinger's Federal Practice pp. 814–818; 3 Freeman on Judgments (5th ed.) § 1191; Note (1880) 20 Am. Dec. 160, *supra*.

[3] See 3 Freeman on Judgments (5th ed.) §§ 1178, 1779.

peals. Cf. *Marshall* v. *Holmes, supra.* Proof of the scheme, and of its complete success up to date, is conclusive. Cf. *United States* v. *Throckmorton, supra.* And no equities have intervened through transfer of the fraudulently procured patent or judgment to an innocent purchaser. Cf. *Ibid.; Hopkins* v. *Hebard,* 235 U. S. 287.

The Circuit Court did not hold that Hartford's fraud fell short of that which prompts equitable intervention, but thought Hazel had not exercised proper diligence in uncovering the fraud and that this should stand in the way of its obtaining relief. We cannot easily understand how, under the admitted facts, Hazel should have been expected to do more than it did to uncover the fraud. But even if Hazel did not exercise the highest degree of diligence, Hartford's fraud cannot be condoned for that reason alone. This matter does not concern only private parties. There are issues of great moment to the public in a patent suit. *Mercoid Corporation* v. *Mid-Continent Investment Co.,* 320 U. S. 661; *Morton Salt Co.* v. *G. S. Suppiger Co.,* 314 U. S. 488. Furthermore, tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud.

The Circuit Court also rested denial of relief upon the conclusion that the Clarke article was not "basic" to the Court's 1932 decision. Whether or not it was the primary basis for that ruling, the article did impress the Court, as

shown by the Court's opinion. Doubtless it is wholly impossible accurately to appraise the influence that the article exerted on the judges. But we do not think the circumstances call for such an attempted appraisal. Hartford's officials and lawyers thought the article material. They conceived it in an effort to persuade a hostile Patent Office to grant their patent application, and went to considerable trouble and expense to get it published. Having lost their infringement suit based on the patent in the District Court wherein they did not specifically emphasize the article, they urged the article upon the Circuit Court and prevailed. They are in no position now to dispute its effectiveness. Neither should they now be permitted to escape the consequences of Hartford's deceptive attribution of authorship to Clarke on the ground that what the article stated was true. Truth needs no disguise. The article, even if true, should have stood or fallen under the only title it could honestly have been given—that of a brief in behalf of Hartford, prepared by Hartford's agents, attorneys, and collaborators.

We have, then, a case in which undisputed evidence filed with the Circuit Court of Appeals in a bill of review proceeding reveals such fraud on that Court as demands, under settled equitable principles, the interposition of equity to devitalize the 1932 judgment despite the expiration of the term at which that judgment was finally entered. Did the Circuit Court have the power to set aside its own 1932 judgment and to direct the District Court likewise to vacate the 1932 decree which it entered pursuant to the mandate based upon the Circuit Court's judgment? Counsel for Hartford contend not. They concede that the District Court has the power upon proper proof of fraud to set aside its 1932 decree in a bill of review proceeding, but nevertheless deny that the Circuit Court possesses a similar power for the reason that the term during