the decision on the former appeal, Jefferson Standard Life Ins. Co. v. Guilford Cty., 225 N.C. 293, 34 S.E.2d 430, which became, and continues to be, the law of the case has so narrowed the controversy that the scope of this review is properly confined and directed to the action of the trial court in denying the reformation of the several deeds to the Bradshaw property and the validity and propriety of the ensuing judgment decreeing foreclosure.

The crux of the case as here presented may be summarily stated: The court below found as a fact that all the parties to the various transactions alleged to be fraudulent acted in good faith, declined to decree reformation as demanded, and ordered foreclsoure. The appellant insists that the conduct of the parties constituted at least legal fraud, regardless of the question of good faith, entitling it to the relief demanded; and that the court had no alternative on the facts to find otherwise or to refuse a positive finding to that effect, and thereupon to reform the instruments as demanded and deny foreclosure.

Legal fraud does not necessarily involve the conscience or moral dereliction, but may in instances where it is recognized as actionable serve as the basis of appropriate relief. 33 Am. Jur., p. 756, sec. 4. If the trial court was wrong in assuming that the acts of which defendant complained did not constitute such fraud, the finding that they were done in good faith might be inconclusive.

A precise definition of legal fraud, serviceable on all occasions, has not so far been formulated. Its characteristics must be gathered from the several individual instances and situations in which it has been predicated as a matter of public policy, most often applied to some breach of duty in a fiduciary relationship. 37 C.J.S., pp. 211-213, sec. 2 (c) (2). There are so many of the elements of constructive fraud absent in the whole complex of incidents brought into the evidence that we are of opinion they do not constitute either moral or legal fraud. However this may be, legal fraud, to be actionable, must include fraud in the defendant and damage to the plaintiff -- using the terms "plaintiff" and "defendant" as causes are usually constituted. Some right of the party seeking relief must have been injuriously affected by the fraud or some inequitable advantage taken; 37 C.J.S., p. 215, sec. 3; Brooks v. Greenville Banking & Trust Co., 206 N.C. 436, 174 S.E., 29; and there must be some causal connection between the fraud and the injury alleged, and some relevancy between them and the relief demanded. The court would not undertake, on grounds of fraud, to reform an instrument executed between strangers, except to establish some right of the petitioner which has bene defeated or injuriously affected by the fraud.

In the case at bar, the appealing defendant had no property or property right in the Bradshaw

property unless it acquired that right through

the agency of Conner, and to assert that agency would be to ratify the fraud it has successfully denounced, or, to put it in terms more consonant with the facts, an agency it had no capacityto create.

The defendant had no connection with the Bradshaw purchase except through Conner. He was commissioned to buy the property with money borrowed from plaintiff on the credit of defendant, and purportedly did so. The character of that transaction cannot now be changed by nunc pro tunc amendment to read into it an innocent purchase by the county out of surplus funds available for the purpose. The county, on the facts of record, did not contribute anything to the purchase, although it repaid a part of the loan made by plaintiff to Conner and spent a considerable sum of money in completing the building and improvements on the property. If defendant has any right of redress for these expenditures, it must take some other form. They cannot be confused with the purchase price paid for the property, nor by legal fiction imported into that transaction so as to make the agency lawful or invoke its aid in the attempt to establish a trust with respect to any money contributed to the purchase. The transaction, as far as the attempted participation of the county therein is concerned, was violative of two unyielding prohibitions of the Constitution, as well as a body of statute law, and the result, as affecting the county, is void.

Even if fraud should be found in the several transactions contemplated in the plan of financing adopted, it does not necessarily follow that defendant was thereby brought into position to avail itself of the fraud in the peculiar manner proposed, or to demand the suggested relief. Assuming, contrary to our opinion, that the conduct of all parties to the transactions was fraudulent, what is the grievance of the county, and what may it equitably demand? The fruits of the fraud? Or, rather, to be removed from its atmosphere unhurt?

Guilford County retains its corporate entity, or perhaps we should say has a continuing identity throughout all the changes in personnel of its governing boards. The responsibility of its officers to the county for dereliction of duty is one thing, and the liability of the county for its dealings with others is quite another. In the latter relation it is held to the same rules of equitable dealing that apply to all persons, natural or corporate, in so far as that may be done while respecting its municipal character and the laws regulating its business and commercial transactions. In its cross action for equitable relief these rules must be observed. The maxim that he who seeks equity must do equity is not a precept for moral observance, but an enforceable rule of law. Pomeroy, Equity Jurisdiction, Vol. 2, sec. 385, p. 51, et seq.; Hairston v. Keswick Corp., 214 N.C. 678, 200 S.E.,. 384. We are not addressing this

observation to the question of restitution -- which the judgment under review has eliminated from the authorized procedure. We refer to the objective defendant seeks to reach through reformation of the several deeds.

The allegations of fraud upon which defendant seeks reformation serve to clothe all the incidents to which they refer in the same sheath of iniquity. The outstanding transactions denounced as fraudulent and conspiratorial are all peas in the same pod. But the scheme of reformation would (a) reform and cancel the deed of trust to Jefferson Standard Life Ins. Co.; (b) strike out the condition of encumbrance in Conner's deed to the county; (c) substitute the county for Conner as grantee in the Bradshaw deed on the strength of his agency and a contribution by the county to the purchase out of surplus funds; all converging to put the title in the county to a valuable property now used by it, and hereafter to be used, for the most necessary purposes of local and county government without, it is insisted, any obligation to pay for it or any forum in which redress may be sought. Certainly there is no rule of equity which privileges one who seeks equity on grounds of fraud to strike down only those transactions which are unfavorable to him and preserve from a like fate those from which he would take an advantage, although equally obnoxious to the law, thus blowing hot upon his fingers and cold upon his porridge.

Many authorities are cited to us in support of the proposition that a municipality is not required to restore the status quo or compensate for benefits received under a void contract where to do so would be tantamount to annulling the statute or doing by indirection that which the municipality was not permitted to do directly. While we do not doubt the propriety of such a rule, the rationale of our decision does not require us to discuss it, since the defendant could not have acquired anything under the Conner transaction which might be made the subject of such a dispute.

When a transaction is in direct violation of the Constitution and laws, it is not necessary to invoke fraud, or contravention of public policy, or any other indirection to establish its invalidity. The law does that. And it has the merit of applying itself analytically and impartially to the offending incidents in whatever relation they are found. We have referred to the invalidity of the attempted appointment of Conner to act as agent of the county in the series of transactions admittedly intended to evade the Constitution and create a county debt by indirection, and the inseparability from that purpose of the acts he was commissioned to perform. Article V, sec. 4, and Article VII, sec. 7, of the Constitution are addressed to the counties and municipalities as such, rather than to their officers, and deprive them of the capacity to contract

under the admitted conditions. There is no reason why the salutary rule applied to natural persons under such circumstances should not apply to a corporation or a municipality: Where the intended principal has no capacity to do the act if present, he is without power to appoint an agent for that purpose. Rest., Agency, sec. 20; 2 C.J.S., Agency, sec. 13, and citations. Since there has been no change in the fundamental law investing the defendant with power or capacity to do the act at this time, it cannot ratify or adopt the act purportedly done in its behalf. Rest., Agency, sec. 86; 2 Am. Jur., Agency, sec. 216; Norton v. Shelby County, 118 U.S., 425, 30 L. Ed., 178, 190. since the transaction under review was unambiguous in its character, in violation of constitutional provisions and in contravention of public policy, and would still be unlawful, it is incapable of ratification.

We reach the conclusion that the defendant acquired no interest in the Bradshaw property through the agency of Conner or by any contribution made to its purchase price, and the refusal of the court to reform the Bradshaw deed by substituting Guilford County as the grantee was proper. The refusal to make the further reformations and cancellation demanded in defendant's cross action was justified under the facts. The defendant having failed to secure the reformation of the deeds as pointed out in Ins. Co. v. Guilford County, supra, the case reverts to the controlling principles there announced.

We note from the record that by resolution the County Commissioners have declared that the purchase of the property in controversy is a necessary governmental expense; and the same resolution discloses that the county has on hand a surplus fund legally available for that purpose. The judgment correctly declares that the restraining order in the case of Hill v. Stansbury, 224 N.C. 356, 30 S.E.2d 150, because of its exceptive provisions, does not apply to the present controversy, and would be no barrier to such action as the county desires to take in the premises. The judgment, which we are constrained to affirm, will not, therefore, of necessity put the county out of doors or cause it any grave inconvenience in the protection of its investment in property it took cum onere.

The judgment of the court below was in accord with applicable legal principles and justified by the facts found, and it is

Affirmed.

Disposition

Affirmed.