

HERRING, ASSIGNEE, *ETC.*, *V.* RICHARDS AND  
OTHERS.

*District Court, D. Minnesota.*

February, 1880.

1. VOLUNTARY CONVEYANCE—PARENT AND CHILD—FRAUD.—A voluntary conveyance from a parent to his children, by way of settlement, while solvent and free from debt, and not disproportionate to his means, will be sustained, as against subsequent creditors, in the absence of fraud.
2. SAME—SUBSEQUENT IMPROVEMENTS—FRAUD.—Subsequent contributions of money, for the purpose of paying off encumbrances and improving the property, will not render such conveyance void.
3. SAME—PRESUMPTION OF ACCEPTANCE.—In the absence of direct testimony the acceptance of the grant will be presumed, after the expiration of four years, where the grantees held, owned, controlled, and managed the property from the time of the conveyance, and the only occupancy had been by their tenants, and for their sole and exclusive use.

*H. P. Herring*, for plaintiff.

*George B. Young*, for defendant.

NELSON, D. J. This suit is brought to recover certain real property alleged to have been conveyed in fraud of creditors.

On August 12, 1874, William Richards purchased of Aaron S. Everest and wife the property in controversy, and received a deed therefor, which was recorded August 15, 1874. The purchase price was \$2,000, and Richards paid \$200 in cash, and gave his notes and a mortgage to secure the balance of the purchase money. The notes were four in number, viz.: One for \$300, due August 12, 1875; one for \$500, due August 12, 1876; one for \$500, due August 12, 1877; one for \$500, due August 12, 1878.

On August 14, 1874, Richards conveyed the farm for a consideration, expressed in the deed, of \$200,

to his daughters, Minnie Richards and Mary Vine Richards, now Mary

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Vine French, wife of the defendant Lafayette French. It is admitted this conveyance was voluntary, and subject to the mortgage.

At the time of this conveyance to the children, Richards was engaged in the lumbering business, owning an interest in lumber yards at Austin and Minneapolis, and connected with Bray & French and his son, William A. Richards, and subsequently with Bray, Wilder & Co., the successors of Richards, Bray & French, at Minneapolis. The aggregate interest of Richards in the business was sworn to by competent witnesses as amounting to over \$7,000; and at that time Richards also owned real estate in Austin, valued at over \$8,000, out of which there was a rental, in 1874, of \$1,455, and a trifle less in 1875 and 1876, and on which was an encumbrance of only \$500. Richards' profits or income, for 1874, amounted to \$2,436.15, from his lumber trade, in addition to the rental above stated. He owed some debts in his business, but his property interest was fairly worth, according to the balance sheet and other testimony, \$8,000 in the lumber business, over and above his liabilities, and \$8,000 in real estate at Austin, encumbered to the amount of \$500.

There is no evidence that Richards' estate was less during the year of 1874, but it was ascertained on January 1, 1876, Richards had lost, during the year 1875, about \$6,000; and, heavy losses following, he became insolvent, and in October, 1877, was adjudged a bankrupt.

The assignee insists that the conveyance to his children by Richards was in fraud of subsequent creditors. The land conveyed was subject to the mortgage to secure \$1,800, the balance of the purchase price agreed to be paid Everest, and at the time of

Richards' bankruptcy all but the last note of \$500 had been paid. The land was improved every year by plowing and breaking up additional acres, fencing, etc., and it is urged that the testimony shows the money expended in improvements belonged to the bankrupt Richards. I do not find such to be the case. An analysis of the evidence shows the following amount of money was laid out in improvements and necessary expenses, and the sources from which it came:

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ANALYSIS OF PAYMENTS  
EACH YEAR, SHOWING BY  
WHOM MADE.

1874-5—Total expended on farm	\$1,346		
	49		
Furnished by Mrs. Richards	649		
	81		
Paid by Richards	\$696	\$ 696	
	68	68	
Received by Richards from farm.			\$341
			50
1876—Total expended on farm	2,344		
	46		
Furnished by Mrs. Richards	467		
	83		
Furnished by Richards	\$1,876	1,876	
	63	63	
Received by Richards from farm			2,281
			00
1877—Expended on farm	\$1,875		
	54		
Received from farm	2,777	1,875	2,777
	97	64	97
			\$4,448
			\$5,400
			95
			47
In 1874-5 Richards laid out	\$696		
	68		
Richards received	341	50	

Farm debtor to Richards	\$355 18	\$355 18
In 1876 Richards laid out	1,876 63	
Richards received	2,281 00	
Richards debtor to farm	\$404 37	\$404 37
In 1877 Richards laid out	1,875 64	
Richards received	2,777 97	
Richards debtor to farm	\$ 902 33	902 33
Balance Richards debtor to farm.		95152
		\$1,306 70
		\$1,306 70

MONEY AND LUMBER  
FURNISHED FOR FARM BY  
MRS. RICHARDS, OUT OF HER  
SEPARATE PROPERTY.

	Money to	
1875—July 6.	pay Ernest on \$300 note	\$331 25
	Lumber,	
Sept 9.	\$185.58; cash,	281 01
	\$95.43	
	Cash to	
20.	pay Cochran	37 55
	Total in	\$649
	1875	81
1876—March 11.	Lumber for stable	114 66

MONEY AND LUMBER  
 FURNISHED FOR FARM BY  
 MRS. RICHARDS, OUT OF HER  
 SEPARATE PROPERTY.

	Paid for	
	nails,	
18.	\$6.50;	42 50
	barley,	
	\$36	
24.	Paid seed	204
	wheat	30
	Paid red-	
28.	top seed	12 57
	and clover	
	seed	
	For work	
31.	in	40 00
	building	
	stable	
June 9.	Lumber	53 80
	Total in	\$467
	1876	83
	Add	
	amount in	649
	1875, as	81
	above	
	Total	
	amount	\$1,117
	paid by	64
	Mrs.	
	Richards	

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FARM ACCOUNT, 1877.	<i>Dr.</i>	<i>Cr.</i>
April. Expenses putting in crop—Paid		
Wm. Way, Vincent & Gallagher, and	\$120	
Norwegian and team, as per time book	12	

FARM ACCOUNT, 1877.	<i>Dr.</i>	<i>Cr.</i>
July 19, and part of August. For harvesting and stacking, to Wm. Way, superintending	50 00	
Aug. 23. J. Frost and J. Owens and hands	78 00	
Dickinson and teams	25 00	
For wire	50 50	
Paid for threshing 2,792 bushels wheat	139 60	
Paid for help, by order from Wm. Way, as per time book—		
For teams	49 50	
Men to help threshing	41 25	
31. Paid Everest two notes and interest, at Mower County Bank	1,126 67	
Nov. 1. Wm. Way and teams, plowing 130 acres.	195 00	
July 23. Sold 10 tons hay, @ \$5		\$50 00
Aug. 24. Sold 2,807½ bushels wheat, @ 88 cents		2,470 60
Hay—seven tons to Decker		35 00
Sept. 12. Hay—13 tons in stack		65 00
Oct. 30. 174 bushels wheat, @ 88½cents, from land worked by O. Smith, on shares.		157 37
	\$1,875	\$2,777
	64	97

It appears from the foregoing schedule, which is sustained by the evidence, that the notes given by Richards in part payment of the property were not paid by him out of money belonging to his estate, but by Mrs. Richards, out of her own money and the proceeds of the farm.

It appears that a small amount, in addition to the first payment of \$200, made by Richards, was laid out by him upon the farm, but I do not think the

sum can be regarded so large a settlement upon his children as to make void the conveyance. If it was made in good faith, with no intent to defraud creditors, it will not be set aside, when it is in proof that at the time Richards made it he possessed ample means to pay his debts, unless the business in which he was engaged, or intended to engage, was so hazardous, and required such large pecuniary liability, that he could not reasonably believe the gift would not imperil his ability to meet his debts, to be contracted in the future.

It is not proved such was the case. The conveyance was <sup>443</sup> openly made, and the deed was recorded, and subsequent creditors had notice that the property was in the name of the children. They cannot be heard to say that credit was given Richards on the strength of his ownership of this land. If the conveyance had been secret, concealed from creditors, and the amount of the gift impaired the ability of Richards to pay, the creditors might complain.

I think it is proven that the gift was accepted by the daughters, and the following legal propositions must control the decision of this case:

*First.* Unless fraud was intended, when the conveyance was made by the father to his children, it is not void or voidable as to his subsequent creditors, inasmuch as he was free from debt at the time it was made. 8 Wheat. 239, and note to same case in 1 Am. Lead. Cases; 2 Kent's Com. 173; 3 John Ch. 481; Id. 328.

*Second.* Such settlement, though voluntarily made, will be upheld. *Ellison v. Ellison*, 1 Lead. Cases in Equity, 382.

*Third.* There is no presumption of constructive fraud by such settlement, as there might be if debts existed and the debtor impaired the rights of creditors. *Kehr v. Smith*, 20 Wall. 31, 35.

The rule may be summed up that the gift, conveyance, and settlement will be upheld "if it be

reasonable, not disproportionate to the husband's means, taking into view his debts and situation, and clear of any intent, actual or constructive, to defraud creditors." This doctrine is solid.

A fraudulent intent must be clearly shown, but if the amount of the property thus conveyed impaired the means of the grantor, so as to hinder and delay his creditors, it is void.

If an honest motive can be imputed to the donor, equally as well as a corrupt one, the former should be preferred.

If this case is tested by the rules above laid down, I think the conveyance can be sustained, for the intent to defraud creditors is not clearly and distinctly proved. There is some conflict in the testimony upon this point, but the plaintiff, upon whom the burden of proof is thrown to show the fraudulent intent, has failed to prove it.

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In addition to the business of buying and selling lumber, Richards, about 1875, before his bankruptcy, with associates, built a saw-mill, which burned down a short time after it commenced work. This misfortune impaired, to some extent, his ability to meet his debts and pay losses, for, in order to obtain the means required to put into this enterprise, he mortgaged a part of his property, and after the fire borrowed money, and gave mortgage security therefor, to pay the losses. There is no evidence, however, to show that Richards, at the time he gave his daughters the land, or at the time he invested a small sum in improvements there on, contemplated the erection of a mill, or engaging in such enterprise, and although I take into account the pecuniary condition of Richards during the entire period of time when these several gifts were made, the nature of this particular enterprise cannot be considered, for he did not intend at the time to embark in it.



The volume of testimony is so great that I can only briefly elaborate the facts. I have done this so far as it was necessary to apply the rules which must govern the decision.

There is nothing in the case which, to my mind, brands the conveyance as absolutely void or voidable, as no actual fraudulent intent, on the part of Richards, is shown when he made the gift.

The amount laid out by Richards did not impair his estate to such an extent as to be a fraud upon subsequent creditors, and under the circumstances the conveyance is not illegal and void.

A decree will be entered dismissing the bill.

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