

WILSON *ET AL.* V. WELSH *ET AL.*

*Circuit Court, D. South Carolina.*

March 7, 1890.

SALE—FRAUDULENT VENDEE—BONA FIDE PURCHASERS—EVIDENCE.

The evidence may be very conclusive that one purchased a stock of goods with the formed intent to sell it immediately, and to hold the proceeds in fraud of the parties from whom he purchased; but mere suspicion, however grave it be, will not be sufficient to convict his vendee of fraudulent collusion, if his participation in the fraud is not made out by clear preponderance of testimony.

*Syllabus by the Court.*

In Equity.

*J. C. Haskell* and *Smythe & Lee*, for complainants.

*L. F. Youmans*, for defendants.

BOND, J. This is a bill in equity filed by certain citizens of Maryland to set aside a sale of a stock of goods in Lancaster, S. C., made on the 22d November, 1883, by the defendant T. J. Welsh to his co-defendant, B. F. Welsh, as agent of J. R. Welsh. The facts in the case present no great difficulty in coming to the conclusion that T. J. Welsh had a well-settled determination to buy as many goods as vendors in Maryland and elsewhere, over anxious to sell,—perhaps too credulous,—would sell to him, without the most remote expectation on his part of paying for them. Shortly after his return to Lancaster, and before some of the goods, so easily purchased, had arrived, he sold out the whole stock in trade to his brother, as the agent of his father, J. R. Welsh. The price paid by the father for the goods was a fair one, provided it was actually paid. The proof of this is sufficient, if you credit the witnesses for the defendant; and it appears quite certain that J. R. Welsh, the father, was abundantly able to make the purchase and pay for the goods. As to the credibility of the witnesses for defendant, while their testimony is unshaken by cross-examination, it looks suspiciously untrue, but, unless better proof is offered to contradict it, we suppose it must stand. The burden, of proof to show the fraud in this transaction is on the complainants, which burden, indeed, they have assumed; but, while they have succeeded in raising a very dark cloud of suspicion over the whole transaction, they have not affirmatively shown that J. R. Welsh, the real vendee, was at all a party to the fraud, or had any reason to suppose he was engaged in one. The bill will be dismissed, with costs divided.

The Chief Justice sat in this cause, and, while he has not seen the above, coincides in the judgment.