

I am therefore of opinion that the executive committee of the board of lady managers had full power to remove the complainant from the office of secretary, and that no action of the board of reference and control of the commission was needed to make such removal complete. Complainant was therefore effectually out of office when this bill was filed, and the law is fully settled that a court of equity has no power to restore a person to an office from which he has been removed. The exceptions to the answer are therefore overruled, and the prayer for an injunction denied.

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STOCKSTILL *et al.* v. BART *et al.*

(Circuit Court, D. Washington, N. D. August 11, 1891.)

1. ESTOPPEL—QUITCLAIM DEED.

A daughter bought real estate, and had the deed made to her mother, who afterwards conveyed it by deed, in which her husband did not join, to a corporation, from which plaintiff afterwards purchased it. The consideration was paid by the corporation to the daughter. The plaintiff objected to the title, whereupon the husband quitclaimed to plaintiff for a nominal consideration. The husband knew of the conveyance to the corporation, and did not object thereto, nor assert any title to the premises, until after he had deeded to plaintiff. *Held*, that both husband and wife, and their subsequent grantee without consideration, were estopped to claim title adversely to the plaintiff.

2. COMMUNITY PROPERTY—SEPARATE CONVEYANCE BY WIFE.

Where real estate is purchased by one person, and title taken in the name of a married woman for convenience only, the grantee is a mere trustee, and her separate deed, by direction of the *cestui que trust*, who received the consideration, will pass a perfect title, since the property is not community real estate within the meaning of Code Wash. § 2410, providing that the husband has control of community real estate, but shall not sell or convey it unless the wife joins in the deed, and that such deed must be acknowledged by him and his wife.

3. SAME—GIFTS.

Under Code Wash. §§ 2400, 2408, providing that property acquired by husband or wife after marriage by gift, devise, or inheritance shall be the separate property of each, respectively; and section 2409, providing that all property otherwise acquired shall be community property,—real estate conveyed to a married person as a gift does not become community property, even though the donor intended it as a gift to both husband and wife.

In Equity.

*Thomas R. Shepard*, for plaintiffs.

*George D. Blake* and *James M. Epler*, for defendants.

Before SAWYER, Circuit Judge, and HANFORD, District Judge.

HANFORD, J. This is a suit to remove a cloud upon the title to real estate. A certain corporation, being the apparent owner of the property, sold it to the complainants for its full value, gave them a deed, and put them in possession. Whether said corporation was or was not the legal owner of the property at the time of said sale depends upon the validity of a contract which it made for the purchase thereof, and of a deed given to it by Mrs. Hanna Forbes. The defendant Bart claims to be the owner of the property by virtue of a deed to him from Mrs. Forbes and her hus-

band, and he has given a mortgage upon it to his co-defendant, Mrs. Wilkie. Said deed and mortgage have been recorded in the public records, and the claim to the property which the defendants are asserting by virtue thereof constitutes the cloud which the plaintiffs ask the court to remove. Mr. and Mrs. Forbes are the parents of Mrs. Wilkie, who is a married woman, living separate and apart from her husband; and the defendant Bart is a son of Mrs. Wilkie. All of said parties live together as one family, and Mrs. Wilkie is the business manager and provider, Mr. and Mrs. Forbes being well advanced in years and feeble.

The transactions and facts affecting the title to the property and leading to this lawsuit are as follows: Mrs. Wilkie bought the property, and paid her own money for it. By her direction her mother was named as the grantee in the deed given to consummate said purchase. Mrs. Wilkie employed a firm of real-estate agents to sell said property, and through said agents negotiated the sale of it to the Good Templars' Investment Association of Lake Washington, the corporation before mentioned. By her direction Mrs. Forbes made a deed to said corporation. At the time of said sale, Mrs. Wilkie represented to her said agents, and, presumably, through them to the purchaser, that the property was her own, but the business had to be done in the name of her mother, for the reason that she could not deal in real estate in her own name, as she had a husband living in Chicago. The defendant Bart had actual knowledge of the sale to said corporation, and subscribed the deed given by his grandmother, as one of the witnesses. Said sale was made for a consideration of \$500 in cash and the further sum of \$1,000 to be paid thereafter, secured by a mortgage upon the property, in which Mrs. Forbes was named as the mortgagee. Mrs. Wilkie received all of the \$500, and used it as her own. There has been no offer made by either of the parties to restore any part of said consideration to said purchaser nor to the plaintiffs. Several months after said purchase the corporation sold the property to the plaintiffs for the price of \$2,000, one-half of which was paid in cash, and the remainder was paid by assuming the obligation to pay Mrs. Forbes the principal and interest due and to become due upon the mortgage above mentioned. Before consummating this purchase, the plaintiffs questioned the title, on the ground that Mr. Forbes had not joined with his wife in the conveyance to the corporation; and to meet the objection so raised, and satisfy the plaintiffs that the title was valid, the agents through whom the sale was negotiated, being the same firm who had before negotiated the sale for Mrs. Wilkie to the corporation, obtained a quitclaim deed from Mr. Forbes to the plaintiffs, said deed being for a nominal consideration. After said purchase the plaintiffs entered into actual possession, and have expended about \$40 in making improvements upon the property. The defendants both knew of the making of this deed at the time, and made no objection to it, except that Mrs. Wilkie informed the agents who asked for it that Mr. Forbes had no interest in the property. The deed from Mr. and Mrs. Forbes to their grandson, the defendant Bart, was given subsequent to the purchase of the property by the plaintiffs and the taking of possession under it, and for no

consideration other than love and affection; and the mortgage from Bart to his mother was also given without consideration other than love and affection; and both of said instruments were given at the request of Mrs. Wilkie.

The defendants admit that their position, for the purpose of claiming the property adversely to the plaintiffs, is no better than that which Mr. and Mrs. Forbes would occupy if the deed to the defendant Bart had not been given; but they contend that said parties did not by their separate deeds, nor by reason of the facts above narrated, convey any title to the plaintiffs or their grantor, nor become estopped from claiming the land. They claim that by the deed to Mrs. Forbes, the land became community property of the said grantee and her husband, and in this they rely upon the following provisions of the Code of this state, viz.: Sections 2400 and 2408 in effect provide that the property and pecuniary rights of married persons at the time of marriage, and the property and pecuniary rights acquired by each after marriage, by gift, devise, bequest, or inheritance, with the rents, issues, and profits thereof, shall be the separate property of each respectively; and section 2409 makes all property of married persons acquired after marriage, otherwise than as prescribed in sections 2400 and 2408, community property. When the title to real estate is conveyed to a married person by a deed which does not by its own terms or recitals show to the contrary, a legal presumption arises that the property becomes community property. This presumption is invoked, and the defendants claim that it is strengthened and made conclusive in this instance by Mrs. Wilkie's testimony given upon the trial, to the effect that she intended, by causing the conveyance of the property to her mother, to make a gift of it to both of her parents. The defendants claim further that community property cannot be conveyed by the separate deeds of the owners, nor otherwise than by a joint deed, and that any contract for the sale or incumbrance of community property other than a joint contract of the husband and wife is not enforceable, because prohibited by a positive statute, to-wit, section 2410 of the Code, which reads as follows:

"The husband has the management and control of community real property, but he shall not sell, convey, or incumber the community real estate, unless the wife join with him in executing the deed or other instrument of conveyance by which the real estate is sold, conveyed, or incumbered; and such deed or other instrument of conveyance must be acknowledged by him and his wife: provided, however, that all such community real estate shall be subject to the liens of mechanics and others for labor and materials furnished in erecting structures and improvements thereon, as provided by law in other causes, to liens of judgments recovered for community debts, and to sale on execution issued thereon."

We do not assent to the proposition that the property in controversy ever became the community property of Mr. and Mrs. Forbes. The facts which are conceded in relation to Mrs. Wilkie's actions in buying and paying for the property, in ordering the sale of it, and receiving and using the proceeds, in connection with the fact that at the time of causing the title to be conveyed to her mother she did not, by any act or