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 acknowleged 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

declaration which can be now proven by the testimony of disinterested witnesses, manifest an intention to make a gift, and the further fact that her mother, to whom she caused the title to be conveyed, was subject to her influence, if not entirely subservient to her will, and the motive which she had to place the title to her own real estate in a person other than herself on account of her own *status* as a married woman, and consequent inability to deal in real estate in her own name, are amply sufficient to refute her testimony as to her intention to give the property to her parents. 1 Perry, Trusts, § 147. The conclusion follows naturally and irresistibly from the premises that the name of Mrs. Forbes was used in the transactions for the sake of convenience, and that from the conveyance to her there was a resulting trust in favor of Mrs. Wilkie as the true owner. Id. §§ 126, 143, 147. This being so, the deed given by Mrs. Forbes, the trustee, to the corporation by direction of Mrs. Wilkie, the *cestui que trust*, for a consideration equal to the full value of the property at the time, was sufficient to, and, in our opinion, did, convey a perfect title.

In the second place, the law of this state does not create community property out of real property acquired by gift. There is no room for misunderstanding or misinterpretation of the statute. In plain words sections 2400 and 2408 declare acquisitions by gift after marriage to be separate property, and in language equally plain section 2409 excludes property acquired by gift in describing and defining community property. Hence Mrs. Wilkie, even if she had such intention, and if she had declared it at the time, could not, by making a gift to her parents, create community property, or change the nature of the property bestowed so that it should be, after the title vested in her donees, different in character from that given to it by the statute. We find in the community property law no impediment to the vesting of an estate in a married person, whether man or woman, in trust, nor to the acquisition by a man and his wife, as the separate property of each, of undivided interests in the same lot or parcel of land; but community property, being a creation of the statute, can exist only under the statute, and must answer the statutory definition of such property.

We have considered this case from every point of view suggested by counsel, and we must finally reach the same conclusion whether Mrs. Forbes be regarded as the holder of the title in her own right as sole owner, or as trustee for her daughter, Mrs. Wilkie, or for herself and her husband, or assume that the property was the community property of Mr. and Mrs. Forbes, for, although we could not affirm the validity of the separate deeds of a husband and wife as conveyances of the legal title to community property, unaffected by other circumstances, still we hold that the facts in this case, clearly established by the evidence, are sufficient to create an estoppel against both Mr. and Mrs. Forbes, debarring them from claiming the property adversely to the plaintiffs. Mrs. Forbes understood that by her deed given to the corporation named it was induced to pay a considerable sum of money to her daughter; and, knowing that fact, she cannot honestly or without being guilty of fraud re-

pudiate her solemn act. Mr. Forbes knew of the sale to the corporation soon after it was made, and yet made no objection to it, nor asserted any claim to the property, until after he had given his deed to the plaintiffs. This quitclaim deed, if not valid as a conveyance, is at least a disclaimer of any interest in the property, and by it the plaintiffs were induced to purchase the property and pay for it; and the person by whom they were so induced cannot by any act or deed now deprive them of the property without perpetrating a gross fraud. The plaintiffs had no reason to suppose that either Mr. or Mrs. Forbes did anything which they had no right to do in giving either of the deeds mentioned. They are not chargeable with notice of any facts rendering said deed invalid, and they occupy the position before the court in this suit of *bona fide* purchasers of the property for its full value from the apparent real owner, and, as against Mr. and Mrs. Forbes and the defendants in this case, are entitled to the protection which equity affords to such purchasers of property.

The case of *Holyoke* v. *Jackson*, 3 Pac. Rep. 841, 3 Wash. T. 235, cited by counsel for the defendants, is quite different in its facts from this case, and therefore not in point. In that case the bargain was made during the vendor's absence from his home, and without the knowledge of his wife. The vendee was the proposing party in the negotiations. He knew at the time of the transaction that the property was community property which the other party could not sell without his wife's consent, and he was distinctly warned, before he paid any part of the purchase money, that the wife had not consented to nor authorized the sale. Then, at the earliest opportunity after being informed of it, the wife disaffirmed the sale, and so notified the vendee, and a legal tender of the amount of money received on the contract, with interest, was promptly made, and thereafter kept good. There was no fraud in the case, so that there could have been no recovery of damages in a sum greater than the amount tendered before the suit was commenced. That case, therefore, is one in which the defense rested upon honorable grounds, and it does not support the position held by the defendants in this case in their endeavors to beat a purchaser out of the fruits of his bargain, after receiving from him, and while retaining, the purchase money. The other authorities cited on the side of the defense are also inapplicable to the facts of this case as we find them from the evidence. Upon consideration of all the evidence, pleadings, and arguments, we consider the plaintiffs to be entitled to the relief prayed for, and award them a decree accordingly.

SAWYER, J., concurs.

HUISKAMP *et al. v.* WEST *et al.*

WEST *et al. v.* HUISKAMP *et al.*

(*Circuit Court, N. D. Illinois.* July 29, 1891.)

1. CORPORATIONS—STOCK—ISSUE TO OFFICER.
   A copartnership was formed to buy certain property, thereafter to be conveyed to a corporation to be formed, and stock issued to each partner at $70 per share, of the value of $100 per share, according to the capital contributed. One partner, who became president of the corporation, was to contribute $490,000. He issued stock to himself accordingly, but in fact only contributed $133,000, and gave notes for the balance, which he afterwards paid with the corporation's funds. *Held*, that the issue of stock by the president to himself over the amount actually paid for with his own money was fraudulent.
2. PARTNERSHIP—RIGHTS OF PARTNERS.
   Where a partner in the firm performs services of the value of $10,000 for the company in the purchase of property, and is permitted to retain title to a lot which he represents is worth only about that amount, the other partners being ignorant of its value, when in fact it is worth $40,000, the latter may have a decree against the partner for their *pro rata* interest under the partnership.
3. PLEDGE—SALE BY ASSIGNEE—NOTICE.
   The fact that a pledgee is authorized to sell stock pledged, before maturity of the debt, without notice, in the event of the security depreciating in value, does not authorize a stockholder of the corporation, who has purchased the debt secured, to sell the pledge before maturity without notice, because he claimed the stock was fraudulently issued.

In Equity. Bill by H. C. Huiskamp and others against James J. West and others for an accounting.

Trumbull, Willits, Robbins & Trumbull, A. W. Bulkley, and *E. E. Gray*, for complainants.

John M. Jewett, L. H. Bisbee, and *Flower, Smith & Musgrave*, for defendants.

BLODGETT, J. The bill in this case seeks an accounting as to the ownership of the stock of the Chicago Times Company, a corporation organized under the laws of the state of Illinois. The material allegations of the bill are: That the complainants are, each of them, stockholders in the company. That the capital stock of the company was, by its articles of incorporation, fixed at $1,000,000, to be divided into shares of $100 each. That for many years prior to the organization of the company the late Wilbur F. Storey, of the city of Chicago, had been the publisher and proprietor of the newspaper known as the "Chicago Times." That in the autumn of the year 1887 defendant West, together with Clinton A. Snowden agreed with complainants to purchase from the widow and heirs of Mr. Storey all the property, real and personal, belonging to Mr. Storey's estate, including the Times newspaper, which purchase was to be for the benefit of complainants and said West and Snowden; and that on the consummation of such purchase a corporation should be organized for the purpose of publishing the Chicago Times, the capital whereof should be owned by complainants and said West and Snowden. That, at the time such agreement was made, West and Snowden and complainants were the owners of all but 125 shares of the