quire into such existing equitable rights, or who, after making the inquiry, and the exercise of reasonable diligence, has failed to discover an existing defect in his grantor's title, is entitled to the same protection as the purchaser of personal property in market overt. The rule is founded upon the doctrine of estoppel, which does not allow an owner of property who has permitted a concealment of his claim or rights to thereafter assert them to the prejudice of an honest purchaser, unable, by reason of such concealment, to learn of the existence of such claim or rights in time to avoid imposition. As in all cases where rights depend upon the doctrine of estoppel, a defense of this sort requires the clearest proof of all the facts essential to create the estoppel, and equity does not permit a party to derive benefit from his own ignorance of facts which he could have learned by the exercise of ordinary prudence and diligence. This defense is not available to a person who, by the circumstances connected with his purchase, or the form of the conveyance which he accepts, is apprised that his grantor has not intended or is unable to convey a perfect title, without additional proof showing that the purchaser, after due diligence, failed to discover any valid, adverse claim to the property. One who contracts for and pays the price for a particular parcel of real estate, and obtains a deed which, by its terms, purports to convey the title to the property which it describes, occupies a position entirely different from that of the purchaser who is content to receive merely a conveyance of the right, title, and interest of his grantor in and to the property. By many of the adjudged cases he is held to be chargeable with constructive notice, inherent in the deed, of the actual right and title of his grantor, as contradistinguished from what may at the time appear to be, by his visible possession of the property, or muniments of title shown by the public record. *Blanchard* v. *Brooks*, 12 Pick. 47; *Springer* v. *Bartle*, 46 Iowa, 688; *Steele* v. *Bank*, 79 Iowa, 339, 44 N. W. Rep. 564; *Peters* v. *Cartier*, 80 Mich. 124, 45 N. W. Rep. 73; *Peaks* v. *Blethen*, 77 Me. 510, 1 Atl. Rep. 451; *Logan* v. *Neill*, 128 Pa. St. 457, 18 Atl. Rep. 343; *Hastings* v. *Nissen*, 31 Fed. Rep. 597; *Gest* v. *Packwood*, 34 Fed. Rep. 372; *Mortgage Co.* v. *Hutchinson*, (Or.) 24 Pac. Rep. 515; 3 Washb. Real Prop. (4th Ed.) marg. p. 607; 2 Pom. Eq. Jur. § 753; 1 Devlin, Deeds, § 674. This rule, in all its rigor, has been declared and applied by the supreme court of the United States repeatedly. In the case of *Oliver* v. *Piatt*, 3 How. 333, the question as to the right of the grantee of a right, title, and interest to property to claim protection in equity as a *bona fide* purchaser was elaborately argued by able counsel, and received careful consideration. The opinion of the court was written by Mr. Justice STORY, wherein he expressed the view of the court as follows:

"Another significant circumstance is that this very agreement contains a stipulation that Oliver should give a quitclaim deed only for the tracts; and the subsequent deeds given by Oliver to him accordingly were drawn up without any covenants of warranty, except against persons claiming under Oliver or his heirs or assigns. In legal effect, therefore, they did convey no more than Oliver's right, title, and interest in and to the property; and under such circumstances it is difficult to conceive how he can claim protection, as

a *bona fide* purchaser for a valuable consideration without notice, against any title paramount to that of Oliver, which attached itself as an unextinguished trust to the tracts."

"The general principle is admitted that a grantor conveying by deed of bargain and sale, by way of release or quitclaim, all his right and title to a tract of land, if made in good faith, without any fraudulent representation, is not responsible for the goodness of the title beyond the covenants in his deed. * * * A deed of this character purports to convey, and is understood to convey, nothing more than the interest or estate of which the grantor is seised or possessed at the time, and does not operate to pass or bind an interest not then in existence. The bargain between the parties proceeds upon this view, and the consideration is regulated in conformity with it." (Opinion of Mr. Justice NELSON in *Van Rensselaer* v. *Kearney*, 11 How. 297.)

"The evidence satisfies us that Cook had full notice of the frauds of Powers and of the infirmities of Dessaint's title. Whether this was so or not, having acquired his title by a quitclaim deed, he cannot be regarded as a *bona fide* purchaser without notice. In such cases the conveyance passes the title as the grantor held it, and the grantee takes only what the grantor could lawfully convey." (Opinion by Mr. Justice SWAYNE in *May* v. *Le Claire*, 11 Wall. 217.)

The cases of *May* v. *Le Claire* and *Oliver* v. *Piatt* are cited to the same point, and the doctrine is reaffirmed, by the supreme court in *Villa* v. *Rodriguez*, 12 Wall. 323, and *Dickerson* v. *Colgrove*, 100 U. S. 584. The supreme court has steadfastly adhered to the rule denying the grantee in a quitclaim deed the right to defend as a *bona fide* purchaser against a title paramount to that which his grantor had at the time of executing the quitclaim deed. *Brown* v. *Jackson*, 3 Wheat. 449; *Hanrick* v. *Patrick*, 119 U. S. 175, 7 Sup. Ct. Rep. 147.

The authorities above cited are not unopposed. Some of the ablest text-writers and jurists of this country hold to the view that a grantor cannot by any form of deed do more than convey all his right, title, and interest; that a quitclaim will convey a perfect fee-simple title, just as effectually as a warranty deed, if in fact the grantor at the time of executing the deed has such a title; that a quitclaim deed no more implies that the grantor doubts the goodness of his title than a warranty deed implies that the grantee considers the title unsafe without the support of covenants and assurances involving personal liability for damages; and that a purchaser who relies upon the public records showing a clear title in the grantor, even though he takes a quitclaim deed, cannot be denied the character of a *bona fide* purchaser without robbing the recording acts of their virtue. Between these two extremes the true doctrine is to be found, and the trend of opinion in this country, as may be gathered from the most recent decisions and the latest contributions from American law-writers, is in the direction of greater liberality, and to regard with favor the more reasonable rule by which the actual good faith of the purchaser is made the test of his right in equity; and the question of actual good faith is chiefly one of fact. So that there is no such thing as a conclusive presumption of *mala fides* from the mere acceptance of a quitclaim deed. A purchaser who makes diligent and candid inquiry with intent to ascertain the truth concerning his grantor's

title, and who, after such inquiry, pays a fair price for property in the honest belief that the title is perfect, ought to have protection against adverse rights which, notwithstanding his efforts to discover them, remained concealed from him, although he receives only a quitclaim deed; and if a purchaser does, upon inquiry, learn of the existence of adverse rights before consummating the purchase, he ought not to receive protection against such rights, even though his deed is in form an absolute grant of the property, with a general warranty, and full covenants for title. *Merrill* v. *Hutchinson*, (Kan.) 25 Pac. Rep. 215; 34 Cent. Law J. 174. This is the common sense of the matter, and the only just rule. Nevertheless it is a true and self-evident proposition that by a quitclaim deed the grantee is necessarily warned. By agreeing to accept that form of conveyance, he avowedly assumes all risk of a bad title as between himself and his grantor, and he may be fairly presumed to have made a timely and sufficient examination of the title. From this it follows that he may be conclusively presumed to have become informed of all facts which could have been discovered by an intelligent and earnest effort, and to have acted in the light of all such facts in making the purchase. Within this modification of the rule to which the supreme court seems to be committed, it is not sufficient for the defendants to show that by reason of their failure to inquire they were ignorant of the failure of their grantor to earn the land grant according to the terms of the act of congress. They must prove that they did inquire, and that, notwithstanding the exercise of ordinary prudence and diligence on their part, they were misinformed and deceived, and that they honestly believed that their grantor had acquired a full and complete title to the land by having constructed and completed the wagon road. This much, at least, is required of them to bring the case within any rule deducible from the cases cited in their behalf upon the argument; and for lack of such proof in the case as it is now before this court the evidence is insufficient to sustain their plea.

The appellee, however, claims protection under cover of the bargain and sale deeds from Pengra, the grantee in the quitclaim deeds from the Oregon Central Military Road Company. But Pengra did not at any time assume to deal with the property as the owner of it. He was a mere medium for the transfer of the title to the individuals to whom the corporation had contracted to convey it. Their negotiations for the purchase were not made with Pengra as the apparent owner, but were with the officers and agents of the corporation; and they were content to finally complete the purchase and receive a conveyance in the same manner as in acquiring the one-half interest in the first instance,—that is, by means of two deeds, some five months after their purchase of the one-half interest. No additional grounds for relief or protection are shown by the circumstance that two deeds were made to effect one transfer of the property. In this particular the case is analogous to the case of *Baker* v. *Humphrey*, 101 U. S. 494, wherein Mr. Justice SWAYNE, in the opinion of the court, says:

"Chapman conveyed by a deed of quitclaim to the attorney's brother. The attorney procured the deed to be so made. It was the same thing, in view of the law, as if it had been made to the attorney himself. Neither of them was in any sense a *bona fide* purchaser. No one taking a quitclaim deed can stand in that relation."

For the reasons above given, it is the writer's opinion that the decree of the circuit court ought to be reversed, and that the cause should be remanded for a new trial, with directions to admit evidence offered in behalf of either party as to the completion of the wagon road or failure to complete it, and as to any fraudulent acts or misrepresentation by means whereof the certificates of the governor of Oregon were wrongfully obtained.

HAWKINS *et al.* v. WILLS.

(*Circuit Court of Appeals, Eighth Circuit.* February 15, 1892.)

1. EJECTMENT—EQUITABLE DEFENSES—RES JUDICATA.
   In ejectment in the federal court against purchasers at an execution sale by one holding a conveyance from the judgment debtor, prior in time to the lien of the judgment, the fact that the conveyance was executed in fraud of the grantor's creditors is an equitable defense, not available to defeat the action, and defendants may suffer judgment to go against them, and then resort to equity for relief against such judgment, as well as against the deed upon which it is based.
2. JUSTICES OF THE PEACE—ISSUANCE OF EXECUTION—FILING TRANSCRIPT.
   Where an action in a justice's court is aided by attachment, it is not necessary that an execution be issued by the justice and returned *nulla bona* before the transcript is filed in the county clerk's office, as required by Mansf. Dig. Ark. § 4101. Such case is governed by section 4126, which does not require the issuance of an execution as a prerequisite to the filing of the transcript in the clerk's office.
3. SAME—NECESSITY OF BOND.
   Mansf. Dig. Ark. § 4126, requiring the filing of a bond before the issue by the clerk of an execution on the filing in his office of a transcript of a justice's judgment, is restricted to cases where defendant has been constructively summoned, and does not apply where personal service has been had, or where defendant enters an appearance in the suit before the justice.
4. FRAUDULENT CONVEYANCE TO WIFE—CONSIDERATION.
   A debtor owning about $300 in personal property, and owing debts in excess thereof, conveyed to his wife a tract of 2,000 acres, in pursuance of a prior agreement made with her father to make such transfer in consideration of expenses incurred by the father in taking care of the wife and children. In an action by creditors to set aside such conveyance as to part of the property, as in fraud of creditors, it was attempted to sustain it on the ground of such payment, and also on the ground of payment of subsequent expenses in taking care of the wife and children in a long sickness. It appeared that the wife asserted no claim to the property for 12 years after it was sold on execution against the husband. *Held*, that such conveyance could not be sustained as against creditors.

Appeal from the Circuit Court of the United States for the Eastern District of Arkansas.

In Equity. Bill by A. D. Hawkins and others against Mary E. Wills to restrain the enforcement of a judgment in ejectment, and to set aside a deed to defendant as in fraud of creditors. Plaintiffs appeal from a decree for defendant. Reversed.

D. W. Jones, for appellants.