

No. 4411 Equity.

thereof, is she not a party to the fraud practiced by her husband?

"There is no ascertained rule of Law which fixes and determines what acts and declarations of a party shall, in all cases, be required to establish fraud." (Gardner v. Lewis, 7 Ell, 377.) Each case must be governed by its own circumstances.

The defendants in this case are husband and wife, they were in the possession, use and occupation of these lands from thirteen to fifteen years, before the execution of the deed of August the 8th, A. D., 1878. The wife knew that her husband was improving them by the application of lime, which he obtained from the said John R. Stone; that he was erecting good and substantial buildings thereon, for which she paid (according to the testimony of her husband,) she had the money to pay for. She must have known, from all the circumstances, that her husband was enabled to make these improvements, only upon the belief in the public mind, that he was the owner of the property. She knew that he was in debt for some of the improvements put upon the farm, which she says in her answer she believed to be hers. She knew that the purchase money for the lands, came from her father, and from her share of his estate after his death. She says the lands were purchased for her. She lived on them from 1862 to 1878, and yet she asks the

Court to believe, that during all these years she did not know she had no deed for the property, or that her husband had taken the deeds for the same in his own name until she incidentally learned the fact at that time before the 8th day of August A. D., 1878. And this upon the unsworn statement of the wife, and the statement and testimony of the husband, who, by his own showing, had been making false statements to, and deceiving his wife for fifteen years.

From all these facts and circumstances, and the relations between grantor and grantee being that of husband and wife, the Court is forced to the conclusion, that the wife must have been aware, long before the date of the deed of 1878, that said deeds were in the name of her husband. And in addition to these facts, the husband in his answer states, that each and every deed for the several parts or parcels of land which constitute the farm, conveyed by said deed was taken in the name of this respondent in trust for, and by and between his said wife and himself was understood to be in trust for his said wife. If this be true, the wife really did know that her husband had taken these deeds in his own name, instead of in hers.

The wife, knowing the legal title to these lands to be in her husband, and for thirteen years permitting him to hold himself out to the public as the owner thereof, and thus giving him credit, and enabling him to contract debts, upon the faith of the property, was, and operated as a fraud upon her husband's creditors. And, moreover, this deed, possessing the other usual indicia of fraud in such instruments, namely, "the impoverished condition of the donor, and his connection with the donee, the absolute transfer of all his property, unusual clauses in the deed, its execution pending, active, against the donor," &c., must be considered a fraudulent contrivance of the defendants to hinder, delay and defraud the complainants of their just claims against the donor. Entertaining the views herein expressed, it is unnecessary to pass upon the exceptions to the testimony.

It is thereupon, this fifth day of December, A. D., 1882, by the Circuit Court for Frederick County, as a Court of Equity, and by the Authority thereof, adjudged, ordered and decreed, that the deed from the said James A. Orendorff, to the said Mary C. Orendorff, his wife, bearing date on the 8th day of August, A. D., 1878, and recorded in Liber J. S. No. 10, folio 211 &c., one of the Land Records of Frederick County, and filed in this cause as "Exhibit No. 7," be, and the same is hereby declared and decreed to be void, and the same is hereby vacated and annulled, as against the Complainants,

Opinion & Decree
of Court