

WOODMAN & a. v. CLAY & ux.

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To rebut an inference of fraud, it is competent to show with what intention and under what influences a party may have done or omitted to do a significant act.

BILL IN EQUITY, by judgment creditors of Charles H. Clay, charging that he had conveyed property to his wife in fraud of his creditors, and praying for an account and for the application of the property in discharge of the plaintiffs' judgment. It appearing that the property continued to be taxed to Mr. Clay after he conveyed it to his wife, the defendants excepted to the exclusion of the proffered testimony of Mrs. Clay, that she permitted the property to be so taxed because of her husband's representations to her as to what "the selectmen said about it."

Tebbetts and Copeland & Edgerly, for the plaintiffs.

Hobbs and Sanborn, for the defendants.

FOSTER, J. The good faith of the parties to the conveyance was material upon the question of its validity; and the continued taxation of the property to the husband, with the knowledge and consent of his wife, was a significant circumstance affecting that question. It was competent for the defendants to seek to rebut an inference of fraud by showing with what intention, under what influences, and in consequence of what representations Mrs. Clay may have done or refrained from doing a significant act, such as permitting the property to be taxed to her husband. 1 Gr. Ev., s. 101; *Carter v. Beals*, 44 N. H. 408, 412; *Graves v. Graves*, 45 N. H. 323, 324; *Hale v. Taylor*, *ib.* 405, 407; *Phoenix Ins. Co. v. Clark*, 58 N. H. 164.

New trial granted.

SMITH, J., did not sit: the others concurred.

BELKNAP.

COLE and Wife v. LACONIA SAVINGS BANK.

No homestead right exists in land on which there is no dwelling-house, and which is not occupied or used, nor intended to be occupied or used, as a home place or part of a home place, although the claimant has no other real estate.

BILL IN EQUITY, for a homestead. The parties agreed upon the following facts for the opinion of the court:

May 28, 1878, the plaintiff, Stephen B. Cole, was the owner of one undivided half of the premises described in the bill, being about sixty acres, part mowing and part wood land; and he had no other real estate. On the above day, the defendants, having an execution against him, caused the same to be levied on said land, subject only to the wife's right of dower. Said land never had any dwelling-house on it, and the petitioners were then residing about three miles away.

Barnard & Barnard, for the plaintiffs.

Hibbard, for the defendants.

DOE, C. J. Upon the facts stated, the bill should be dismissed. The case does not show occupation, use, or intention. It does not appear that the premises are a part of the place of the plaintiffs' home.

Case discharged.

FOSTER, J., did not sit: the others concurred.

FOLSOM v. ORIENT FIRE INS. CO.

A suit brought by F. on a policy of insurance, issued to him, payable in case of loss to B., as his interest may appear, may be maintained for the benefit of B. if he appears as plaintiff in interest, even though F. has no title to the property insured.

Judgment may be rendered on a verdict for the plaintiff, in such a suit, for the benefit of B., if after verdict he appear as plaintiff in interest.

ASSUMPSIT, on a policy of insurance on the plaintiff's half interest in a dwelling-house and furniture therein and in a shed, "loss if any payable to B., as his interest may appear." The plaintiff had no legal title to the property insured at the time of the fire, nor when the policy was issued, though the deeds conveying the property from B. to him had been made and executed, but had not been delivered. The defendants' agent knew the true state of the title. The defendants moved for a nonsuit because the plaintiff had no title and no insurable interest in the property destroyed at the time of making the policy nor at the time of the fire.

Motion denied, and the defendants excepted.

The plaintiff had a verdict which the defendants moved to set aside.