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FUTURE INTERESTS-IMPLICATION OF CONDITION SUBSEQUENT IN CONVEYANCE IN CONSIDERATION OF SUPPORT-EQUITABLE AID TO OWNER OF RIGHT OF ENTRY

FUTURE INTERESTS—IMPLICATION OF CONDITION SUBSEQUENT IN CONVEYANCE IN CONSIDERATION OF SUPPORT—EQUITABLE AID TO OWNER OF RIGHT OF ENTRY—Plaintiff, guardian for one Toft, sues to quiet title to land conveyed by Toft to defendant on May 14, 1931, without solicitation or suggestion on defendant's part. Toft at the time was 74 years old. The deed reserved a life estate in Toft, and provided that the grantee was to take care of the grantor during his lifetime. This was all of the grantor's property except about $500. Defendant left after a quarrel on July 5, 1931, but returned a week later and stayed until January 18, 1932, when Toft threatened her life, and she left and has never returned. *Held*, although there is no express condition subsequent, since the conveyance was in consideration of support, an estate upon condition subsequent is created because of the peculiar situation of the parties, and title will be quieted in the grantor by cancelling the deed. *Jancovech v. Christensen*, (Ind. App. 1935) 195 N. E. 287.

The result reached in this case does not conform to the general rule that equity will not enforce a forfeiture.[1] Neither does it take cognizance of the rule that the courts will construe a provision as a covenant rather than as a condition subsequent to avoid a forfeiture.[2] But conveyances in consideration of support and maintenance have everywhere been given special treatment, partly on account of the confidence reposed in the grantee in such cases and partly because of the personal inequality that is often present.[3] The chief uncertainty is concerned with the form of relief which the grantor will receive. The Indiana and Wisconsin courts feel that the important consideration to the grantor was the personal attention and care of the grantee, so that when strained relations between the parties defeat this expectation, the only satisfactory remedy is to imply a condition subsequent and revest title in the grantor.[4] Even on this theory, however, the forfeiture

[1] 1 TIFFANY, REAL PROPERTY, 2d ed., 309 (1920); 3 STORY, EQUITY JURISPRUDENCE, 14th ed., § 1732 (1918).

[2] Columbia Ry., Gas & Elec. Co. v. South Carolina, 261 U. S. 236, 43 S. Ct. 306 (1922); Kilpatrick v. City of Baltimore, 81 Md. 179, 31 A. 805 (1895).

[3] See Glocke v. Glocke, 113 Wis. 303, 89 N. W. 118 (1902), in which title was revested in grantor by condition subsequent even though there was a provision for a mortgage on the land conveyed; Kramer v. Mericle, 195 Iowa 404, 192 N. W. 257 (1923); Bruer v. Bruer, 109 Minn. 260, 123 N. W. 813 (1909) (here the court said that the foundation of equitable relief was the relationship and would grant whatever relief was necessary); Blum v. Bush, 86 Mich. 206, 49 N. W. 142 (1891); Reeder v. Reeder, 89 Ky. 529, 12 S. W. 1063 (1890); 8 R. C. L. 1112 (1915).

[4] Glocke v. Glocke, 113 Wis. 303, 89 N. W. 118 (1902); Huffman v. Rickets, 60 Ind. App. 526, 111 N. E. 322 (1915). The Wisconsin court and other courts read-

is not automatic. Before the grantor can have equitable relief by way of bill to quiet title, he must pay for any expenditures which the grantee has made in supporting the grantor or in improving the property.[5] More frequently the remedy used has been rescission in equity on a theory of substantial breach.[6] The objection to rescission is that it may involve hardship on the grantee where he has made improvements or incurred expenditures for the grantor's support. Some courts have expressed a preference for an equitable lien instead of rescission.[7] The equitable lien in such cases is comparable to the implied grantor's lien in ordinary sales of real estate, and is therefore open to the objection that there can be no lien because the amount is unliquidated and not certain.[8] This is a satisfactory use of the lien where it does not appear that the personal services and kind treatment of the grantee cannot be replaced; but if the factor of personal attention appears to be the essence of the transaction, the equitable lien would not secure this, and it would seem better to put the parties in their original positions on some theory of condition subsequent or rescission. It has sometimes been intimated that the parties must express an intention to charge the land before the lien will be given,[9] but there seems to be no obstacle in viewing the lien as a purely remedial device not directly depending on actual intent.[10]

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ing in conditions subsequent are also very liberal in finding that a re-entry has been made so that title is revested in the grantor.

[5] Huffman v. Rickets, 60 Ind. App. 526, 111 N. E. 322 (1915). See particularly 60 Ind. App. at 544.

[6] See White v. Bailey, 65 W. Va. 573, 64 S. E. 1019 (1909), where an equitable lien was specifically provided for, but the court rescinded the contract; Peck v. Hoyt, 39 Conn. 9 (1872); Maddox v. Maddox, 135 Ky. 403, 122 S. W. 201 (1909); Martinez v. Martinez, 57 Colo. 292, 141 P. 469 (1914); and see 32 MICH. L. REV. 685 (1934).

[7] See Abbott v. Sanders, 80 Vt. 179, 66 A. 1032 (1907), where the conveyance was construed to result in a mortgage to secure performance. See also, Carney v. Carney, 138 Tenn. 647, 200 S. W. 517 (1917), where the court determined the amount of compensation necessary for support and then made a charge on the land for its payment. But this lien should be more than the fair rental value. Wilson v. Wilson, 160 Mich. 555, 125 N. W. 385 (1910); Johnson v. Johnson, 184 Minn. 262, 238 N. W. 483 (1931); Coykendall v. Kellogg, 50 N. D. 857, 198 N. W. 472 (1924) (here the court said that in default of payments ordered by the court, title will be revested in the grantor, the court retaining jurisdiction to deal with changes in conditions).

[8] Burroughs v. Burroughs, 164 Ala. 329, 50 So. 1025 (1909); and see 28 L. R. A. (N. S.) 607 (1910) and 13 L. R. A. (N. S.) 725 (1908) for annotations on this problem and the use of the equitable lien.

[9] See Johnson v. Johnson, 184 Minn. 262, 238 N. W. 483 (1931).

[10] In re Waterson, Berlin & Snyder Co., (C. C. A. 2d, 1931) 48 F. (2d) 704; Chase v. Peck, 21 N. Y. 581 (1860).