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## DOWER - PREMARITAL CONVEYANCE AS FRAUD ON DOWER

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DOWER — PREMARITAL CONVEYANCE AS FRAUD ON DOWER — Decedent, seven days before his marriage to plaintiff, conveyed all his property to his nephew, the defendant. Plaintiff was not informed of the transfer until some time after the marriage. The property was worth \$22,000, and decedent, who was at that time sixty-two years of age, was allowed to retain a life estate therein. Cancellation of a note for \$2,904 owing from decedent to defendant served as consideration for the transfer. *Held*, the transfer was a fraud on dower since it was made without the knowledge of the intended wife for the purpose of defeating the interest which she would acquire in his estate by the marriage. The majority relied upon the following factors as indicative of bad faith on the part of decedent: the consideration was grossly inadequate; the plaintiff was left penniless; the decedent and plaintiff had been "going together" for some time, and she had every reason to believe that he was a man of substance; and decedent retained a life estate in the property without providing for her. Three justices dissented, finding that the consideration was not inadequate, and that therefore the transfer was not a fraud on dower. *Granger v. Granger*, 296 Mich. 357, 296 N. W. 288 (1941).

In the United States it is generally agreed that a wife's interest in the property of her husband cannot be defeated by a transfer before marriage if such transfer is made with the sole intent of defeating that interest.<sup>1</sup> But in England

<sup>1</sup> 48 L. R. A. (N. S.) 512 et seq. (1914); 64 A. L. R. 466 (1929); 112 A. L. R. 649 (1938); 1 Ann. Cas. 860 (1906); 13 Ann. Cas. 104 (1909); 36 MICH. L. REV. 496 (1938); 62 UNIV. PA. L. REV. 374 (1914); 1 TIFFANY, REAL PROPERTY, 2d ed., § 220 (1920); 19 C. J. 514 (1919).

the rule is otherwise.<sup>2</sup> Under the American view, the widow is allowed her interest in spite of the fact that at common law, and under state statutes, one of the requirements for dower is that the husband must be seized of land during the marriage.<sup>3</sup> Logically the English view would seem to be correct, for the husband is not seized of land previously conveyed. But there is perhaps reason to protect a wife who has married with the understanding that her husband has property in which she will have some interest.<sup>4</sup> In England this protection is not generally needed, because of the common practice of making property settlements prior to marriage.<sup>5</sup> Even in this country it is seldom denied that a conveyance in good faith before marriage will defeat dower.<sup>6</sup> A more difficult problem is to determine what factors distinguish a good faith transaction from one made in bad faith. A few jurisdictions hold that any clandestine transfer on the eve of marriage is conclusively fraud on dower.<sup>7</sup> Others are less exacting and hold that such a transfer is merely *prima facie* fraudulent.<sup>8</sup> And still others, including Michigan, require that the fraud must be proved by the party who wishes to impeach the transfer, without the benefit of any presumptions.<sup>9</sup> The rule is also stated that a secret transfer before marriage is a fraud on dower if made with intent to deprive the wife of her interest.<sup>10</sup> Actual intent is, of

<sup>2</sup> 1 BIGELOW, *FRAUD* 610 (1888); 2 *id.* 147, note (1888); 36 *MICH. L. REV.* 496, note 4 (1938). The difference is explained in *Chandler v. Hollingsworth*, 3 *Del. Ch.* 99 (1867). See English statute abolishing dower, Administration of Estates Act, 15 *Geo. 5*, c. 23, § 45 (1925).

<sup>3</sup> 1 TIFFANY, *REAL PROPERTY*, 2d ed., § 210 (1920). E.g., *Mich. Comp. Laws* (1929), § 13072, *Stat. Ann.* (1937), § 26.221: "The widow of every deceased person shall be entitled to dower, or the use during her natural life, of one-third [ $\frac{1}{3}$ ] part of all the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage, unless she is lawfully barred thereof."

<sup>4</sup> 2 SCRIBNER, *DOWER*, 2d ed., 588 (1883); 36 *MICH. L. REV.* 496 (1938); *Chandler v. Hollingsworth*, 3 *Del. Ch.* 99 (1867).

<sup>5</sup> 2 SCRIBNER, *DOWER*, 2d ed., 588 (1883).

<sup>6</sup> *Noah v. Noah*, 246 *Mich.* 324, 224 *N. W.* 611 (1929); 48 *L. R. A. (N. S.)* 512 at 513 (1914).

<sup>7</sup> 48 *L. R. A. (N. S.)* 512 at 515 (1914); 1 *Ann. Cas.* 860 (1906); 13 *Ann. Cas.* 104 (1909); *Ward v. Ward*, 63 *Ohio St.* 125, 57 *N. E.* 1095 (1900); *McCormick v. McCormick*, (*Ohio App.* 1930) 8 *Ohio L. Abs.* 570, supplemental proceedings 124 *Ohio St.* 440, 179 *N. E.* 286 (1931); *Arnegard v. Arnegard*, 7 *N. D.* 475, 75 *N. W.* 797 (1898).

<sup>8</sup> 48 *L. R. A. (N. S.)* 512 at 515 (1914); *Wallace v. Wallace*, 137 *Iowa* 169, 114 *N. W.* 913 (1908), modifying the rule of *Hamilton v. Smith*, 57 *Iowa* 15, 10 *N. W.* 276 (1881); *Dunbar v. Dunbar*, 254 *Ill.* 281, 98 *N. E.* 563 (1912); *Bookout v. Bookout*, 150 *Ind.* 63, 49 *N. E.* 824 (1897). And there may be fraud even though the future spouse has not been selected at the time of transfer. *Beechley v. Beechley*, 134 *Iowa* 75, 108 *N. W.* 762 (1907); *Higgins v. Higgins*, 219 *Ill.* 146, 76 *N. E.* 86 (1905); *Jarvis v. Jarvis*, 286 *Ill.* 478, 122 *N. E.* 121 (1919); 28 *YALE L. J.* 701 (1919).

<sup>9</sup> 48 *L. R. A. (N. S.)* 512 at 513 (1914); *Noah v. Noah*, 246 *Mich.* 324, 224 *N. W.* 611 (1929); *Connelly v. Ford*, 202 *Mich.* 558, 168 *N. W.* 411 (1918); *Dudley v. Dudley*, 76 *Wis.* 567, 45 *N. W.* 602 (1890).

<sup>10</sup> 64 *A. L. R.* 466 at 467 (1929); 1 *Ann. Cas.* 860 at 861 (1906); 36 *MICH. L. REV.* 496 (1938); 1 TIFFANY, *REAL PROPERTY*, 2d ed., 763 (1920).

course, difficult to discern, so surrounding circumstances must be examined. Factors to be considered in determining both good faith and intent include the proximity in time of transfer and marriage, the representations made, the weight of such representations in inducing the marriage, the amount of property conveyed, the amount of control or benefit retained by the transferor, the time of recording the transfer, secrecy, and adequacy of consideration.<sup>11</sup> In the principal case the courts lays special emphasis upon the lack of consideration, but bolsters its decision by calling attention to several other circumstances which point to bad faith. The dissenting justices disagreed on the finding that the consideration was grossly inadequate, and therefore argued that the transfer was not a fraud on dower. Apparently, in spite of the peculiar circumstances surrounding the transfer, the court would not have found fraud had it been convinced that the consideration was adequate. The Michigan court had previously held that there was no fraud in a case where an assignment was made one day before marriage to relieve the assignor of what had become, because of his financial condition, an onerous obligation.<sup>12</sup> On the other hand, there are dicta to the effect that there could still be fraud even though valuable consideration were given.<sup>13</sup> Ordinarily mere lack of consideration, or of any one of the other above-named factors standing alone, would not seem to be sufficient to prove bad faith or fraudulent intent.<sup>14</sup> It would seem more desirable for the courts to review the facts of each case than for them to say arbitrarily that every secret conveyance made on the eve of marriage is ipso facto a fraud on dower.

<sup>11</sup> 36 MICH. L. REV. 496 (1938); *Cranson v. Cranson*, 4 Mich. 230 (1856) (secret deed without consideration to son two weeks before marriage, with life estate retained by grantor); *Brown v. Bronson*, 35 Mich. 415 (1877) (secret conveyance of all grantor's property to his children two days before marriage with retention of control and profits); *Higgins v. Higgins*, 219 Ill. 146, 76 N. E. 86 (1905) (conveyance with no consideration and later misrepresentations as to intended spouse); *Deke v. Huenkemeir*, 289 Ill. 148, 124 N. E. 381 (1919) (secret conveyance with no consideration, and later misrepresentations after the contract to marry had been entered upon); 48 L. R. A. (N. S.) 512 et seq. (1914). And see other cases cited in notes 7, 8 and 9, supra. For cases holding no fraud, see note 14, infra.

<sup>12</sup> *Stotts v. Stotts*, 198 Mich. 605, 165 N. W. 761 (1917).

<sup>13</sup> *Killackey v. Killackey*, 166 Mich. 311, 131 N. W. 519 (1911), previously before the court in 156 Mich. 127, 120 N. W. 680 (1909).

<sup>14</sup> 48 L. R. A. (N. S.) 512 et seq. (1914); *Stotts v. Stotts*, 198 Mich. 605, 165 N. W. 761 (1917) (no fraud although conveyance was made one day before marriage, but with adequate consideration); *Connelly v. Ford*, 202 Mich. 558, 168 N. W. 411 (1918) (no fraud although land conveyed shortly before marriage without showing that ownership of the land influenced the engagement, nor that there was inadequate consideration); *Daniher v. Daniher*, 201 Ill. 489, 66 N. E. 239 (1903) (no fraud although conveyance took place secretly two weeks before marriage, because grantor had duties toward those to whom property was conveyed). See also *Griffin v. Griffin*, 225 Mich. 253, 196 N. W. 384 (1923), and *Noah v. Noah*, 246 Mich. 324, 224 N. W. 611 (1929). Some courts sustain a conveyance if it constitutes a fair provision for children by a prior marriage. See 36 MICH. L. REV. 496 (1938), and 48 L. R. A. (N. S.) 512 at 520 (1914), and cases cited therein.