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Trusts--Enforcement of a Trust Created to Defeat Persons Whom the Grantor Imagined to Be His Creditors

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TRUSTS—ENFORCEMENT OF A TRUST CREATED TO DEFEAT PERSONS WHOM THE GRANTOR IMAGINED TO BE HIS CREDITORS.—A conveys land in trust to B. The trust was created to defeat what B had induced A to believe were his creditors. Actually, they had no lawful claims against A. It is held almost unanimously that equity will enforce such a trust.¹ Despite the fact that the grantor's intentions were not equitable, the courts hold in such cases that the trustee cannot be allowed to take advantage of his own fraud. The active, actual fraud of the trustee overcomes any distaste equity might have toward enforcing a trust created with such a fraudulent intent.

But what of the case where there are no inducements or misrepresentations by the trustee; but the trust is created by the grantor of his own free will, for the purpose of defeating what he believes to be his creditors? The West Virginia Supreme Court of Appeals, in the recent case of *Hall v. Linkenauger*² held that if actually there had been no creditors in existence to be defrauded, the trust would be enforced.

Perhaps the majority of the cases on the subject are flatly contrary to the position of the West Virginia court³ The reasons assigned by these courts for refusing to enforce such a trust are: One, that such enforcement would be contrary to public policy⁴; two, that it would be contrary to the spirit of the statute forbidding fraudulent conveyances⁵; three, that equity will not give relief to a party unless he comes into court with clean hands.⁶ Incidentally, none of the courts draw any distinction between the case where the grantor creates a trust for his own benefit, and the case where he creates the trust for the benefit of a third party.

¹ *Brant v. Brant*, 115 Ia. 701, 87 N. W. 406 (1901); *Kervick v. Mitchell*, 68 Ia. 273, 26 N. W. 434 (1886); *Boyd De La Montagnie*, 73 N. Y. 498 (1878); *Ingersoll v. Weld*, 93 N. Y. S. 291, 103 App. Div. 554 (1905); *Barnes v. Brown*, 32 Mich. 146 (1875); *Harper v. Harper*, 85 Ky. 161, 3 S. W. 5 (1887); *Prewett v. Coopwood*, 30 Mich. 369 (1853); *Kleeman v. Peltzer*, 17 Neb. 381, 22 N. W. 793 (1885); *Rozelle v. Vansycle*, 11 Wash. 79, 39 Pac. 270 (1895); *Wiley v. Carter*, 77 Ia. 751, 42 N. W. 566 (1889); *Wahl v. Taylor*, 176 Ia. 353, 157 N. W. 856 (1916); *Davidson v. Carter*, 55 Ia. 117, 7 N. W. 466 (1880).

² 142 S. E. 845 (W. Va. 1928).

³ *Tantum v. Miller*, 11 N. J. Eq. 551 (1858); *Cameron v. Romele*, 53 Tex. 238 (1880); *Harris v. Harris*, 23 Grat. (Va.) 737 (1873); *Carson v. Beliles*, 121 Kan. 294, 89 S. W. 208 (1905); *Pride v. Andrews*, 51 Oh. St. 405, 38 N. E. 84 (1894); *Jackson v. Marshall*, 5 N. C. (1 Murphy) 323 (1809); *Ratliff v. Ratliff*, 102 Va. 880, 47 S. E. 1007 (1904); *Holliday v. Holliday*, 10 Ia. 200 (1859); *Kihlken v. Kihlken*, 59 Oh. St. 106, 51 N. E. 969 (1893); *Poppe v. Poppe*, 114 Mich. 649, 72 N. W. 612 (1897); *Renfrew v. McDonald*, 11 Hun. (N. Y.) 254 (1877).

⁴ *Tantum v. Miller*, *supra*, n. 3.

⁵ *Ratliff v. Ratliff*, *supra*, n. 3; *Jackson v. Marshall*, *supra*, n. 3.

⁶ *Carson v. Beliles*, *supra*, n. 3.

Yet it would seem that there would be much less reason for refusing to enforce it in the latter instance than in the former.

A number of courts,⁷ however, have taken the same position as the West Virginia tribunal, and it seems to the writer that they represent the better view. As for the argument that such trusts are contrary to public policy, and hence should not be enforced, it may be replied that "No policy of the law is thwarted by a mere motive, which cannot work injury to creditors. The law has no concern with the futile intent to protect property from a claim which its owner fears may be asserted against him, but which is never asserted because it does not exist."⁸ Subjective intent and public policy, at best, are indefinite terms upon which to deny a suitor redress.

As for the contention that the enforcement of such a trust would be contrary to the spirit of the statute against fraudulent conveyances, it should be observed that that statute is specifically directed against conveyances made in fraud of *actual, lawful* creditors⁹—and not imaginary creditors. It is doubtful whether even as intangible a thing as the "spirit" of a statute will apply to imaginary persons.

Most of the courts base their refusal to enforce the trust on the maxim that "He who seeks equity must do equity." They say that the trust comes into the court stained with the fraudulent intent of the grantor, and hence equity will have nothing to do with it. But in enforcing such maxims, equity should not place standards of human conduct on too lofty a level. To demand that a man's very intentions shall be pure, before he is given a remedy, is certainly going far beyond the ordinary needs of justice. Law deals with practical matters, and should be administered in a practical fashion. Again, to refuse relief is to allow the trustee to perpetrate an actual wrong by keeping the land, to which in good conscience he has absolutely no right. To permit this would be to strain after the shadow of intent, and permit the substance of actual injustice. Usually these trusts are created by the grantor to protect himself against a trumped up or illegal claim; and he can see no moral wrong in so acting. Often the grantor puts his entire property in such a trust. "Should the trustee, for nothing,

⁷ *Smith v. Bowen*, 3 N. C. (2 Hayw.) 296 (1804); *Brady v. Ellison*, 3 N. C. (2 Hayw.) 348 (1805); *Vandever v. Freeman*, 20 Tex. 334 (1857); *Rivera v. White*, 94 Tex. 358, 63 S. W. 125 (1901); *Kerrick v. Mitchell*, 68 Ia. 273, 26 N. W. 434 (1886); *Baker v. Gilman*, 52 Barb. 26 (1868). Also, *Criss v. Criss*, 65 W. Va. 683, 64 S. E. 905 (1909); *Thomas v. Anderson*, 76 W. Va. 496, 85 S. E. 657 (1915).

⁸ *Rivera v. White*, *supra*, n. 7.

⁹ Italics ours.

be permitted to reap the fruits of the lifelong, arduous labors of the grantor? Equity and good conscience answer in the negative.¹⁰

—W. T. O'FARRELL.

¹⁰ Hall v. Linkenauer, *supra*, n. 2.