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## Deeds--Consideration of Support--Rescission

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admissibility of such evidence arises from necessity, the certainty that it is true, and from the want of motive to falsify. *Coleman v. Frazier*, 4 Rich. Law 146, (S. C. 1850) 53 Am. Dec. 727. A man is more likely to lie about land or money than he is to make a false statement which will put him under the necessity of defending his life or liberty. The following opinions support the principal case: *Coleman v. Frazier, supra*; *Stanley v. State*, 48 Tex. Cr. 537, 89 S. W. 643; *Blocker v. State*, 55 Tex. Cr. 30, 114 S. W. 814, 131 Am. St. Rep. 772; *Harrison v. State*, 47 Tex. Cr. 393, 83 S. W. 699; *Pace v. State*, 61 Tex. Cr. 436, 135 S. W. 379.

— A. M. C.

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DEEDS—CONSIDERATION OF SUPPORT—RESCISSION.—A father conveyed his land to his two sons in consideration of their agreement to support and maintain him during his life. After the grantees had supported him for eighteen months they died, each leaving a widow and infant children. The grantor brought suit to set aside the deed. *Held*, Equity will not rescind the conveyance but will administer the property for the benefit of all the parties, rendering the grantor his reasonable maintenance and preserving for the widows and children all that remain. *Marcum v. Marcum*, 120 S. E. 73 (W. Va. 1923).

In such cases, when the grantee refuses or fails to perform, the courts grant relief in various forms. Some refuse equitable relief altogether and confine the grantor to his action on the agreement for damages. *Self v. Billings*, 139 Ga. 400, 77 S. E. 562; *Schott v. Schott*, 168 Cal. 342, 143 Pac. 595; *Gardner v. Knight*, 124 Ala. 273, 27 So. 298. Others enforce the condition or agreement as an equitable lien or mortgage, or hold the conveyance creates a continuing obligation in the nature of a trust. *Storey-Bracher Lumber Co. v. Burnett*, 61 Ore. 298, 123 Pac. 66; *Abbott v. Sanders*, 80 Vt. 179, 66 Atl. 1032; *Grant v. Bell*, 26 R. I. 288, 58 Atl. 951. Perhaps the majority allow the conveyance to be set aside. *Wilfong v. Johnson*, 41 W. Va. 283, 23 S. E. 730; *O'Ferrall v. O'Ferrall*, 276 Ill. 132, 114 N. E. 561; *Martinez v. Martinez*, 57 Colo. 292, 141 Pac. 469; *Young v. Young*, 157 Wis. 424, 147 N. W. 361; *Glocke v. Glocke*, 113 Wis. 308, 89 N. W. 118; *Priest v. Murphy*, 103 Ark. 464, 149 S. W. 98; See I TIFFANY, REAL PROPERTY, 2nd. ed., § 89. Vari-

ous theories are assigned as a basis for the relief granted. The more common are inadequacy of remedy at law and failure of consideration. In *Glocke v. Glocke, supra*, the agreement is treated as a condition subsequent, for which upon non-performance and a re-entry, or equivalent, equity will set aside the deed. In *O'Ferrall v. O'Ferrall, supra*, the Illinois court holds that the conduct of the grantee, in breaching the agreement, gives rise to a presumption of fraud at its inception and grants relief on that consideration. As a consequence of that theory, the Illinois court has held that where the failure to perform was occasioned by the death of the grantee there could be no such presumption, and so no cancellation of the deed. *Calkins v. Calkins*, 220 Ill. 111, 77 N. E. 102; *Stebbins v. Petty*, 209 Ill. 291, 70 N. E. 673. So, also, where the agreement is treated as a condition subsequent, the conveyance has been annulled on the death of the grantee. *Cree v. Sherfy*, 138 Ind. 354, 37 N. E. 787; *Morgan v. Loomis*, 78 Wis. 594, 49 N. W. 109; *Bishop v. Aldrich*, 48 Wis. 619, 4 N. W. 775; but see *Danielson v. Danielson*, 165 Wis. 171, 161 N. W. 787. Where the basis for rescission is failure of consideration the courts seem to favor cancellation of the deed, though they require the grantor to do equity to the grantee's estate. *Maddox v. Maddox*, 135 Ky. 403, 122 S. W. 201; *Payette v. Ferrier*, 20 Wash. 479, 55 Pac. 629. The later West Virginia cases seem to have gone on failure of consideration. *Cumberledge v. Cumberledge*, 72 W. Va. 773, 79 S. E. 1010; *White v. Bailey*, 65 W. Va. 573, 64 S. E. 1019. In *White v. Bailey, supra*, the court refers to two prior cases as having been decided on the same grounds. *Fluharty v. Fluharty*, 54 W. Va. 407, 46 S. E. 199; *Goldsmith v. Goldsmith*, 46 W. Va. 426, 33 S. E. 246. On the authorities the principal case might well have been decided in favor of rescission but on the whole the action of the court is perhaps the better precedent and the more equitable relief. It has the support of several cases granting similar relief. *Simmons v. Shafer*, 98 Kan. 725, 160 Pac. 199, *Webster v. Cadwallader*, 133 Ky. 500, 118 S. W. 327; *Keister v. Cubine*, 101 Va. 768, 45 S. E. 285.

— R. M. M.

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DEEDS — CONSTRUCTION — GRANTEE IN OFFICIAL CAPACITY.—  
P brought a bill to quiet title, alleging he had a valid title. The