GULLETT & WIFE *vs.* LAMBERTON.

The act of 1840, making slaves real estate, was only designed to change their mode of descent, and conveyance; and was not intended to deprive the owner of the common and appropriate remedies, then in use, for the recovery of the possession of such property, when unjustly deprived of it; or for the recovery of damages for injuries inflicted upon it.

The action of replevin, therefore, lies for a slave, notwithstanding the passage of that act.

An instrument cannot be considered or construed as a deed of gift, when it expresses, upon its face, a grant made for a valuable consideration. The parties are estopped to deny the consideration thus expressed.

A minor may contract for, and receive a deed to a slave.

A deed should be construed so as to make every part of it operative, if possible; and if the deed cannot operate as intended by the parties, such construction should be given it as to make it operate in some other manner.

In this country, real and personal estate stand upon the same footing, as to lim-

itations and reservations contained in conveyances, and a sale may be made, creating a future estate in personal property, the vendor retaining the right of possession for life, or a shorter period.

A deed conveying a slave for a valuable consideration, with a reservation of possession to the vendor during his life, or pleasure, is valid.

The delivery of a slave to a daughter, by her father, the subsequent and undisputed possession of her husband after marriage, with the acquiescence of the father, during his life, are circumstances affording strong, if not conclusive, evidence of title in the son-in-law.

The declarations of a vendor, made subsequent to the sale, and in the absence of the vendee, cannot be given in evidence to impeach the validity of the sale.

More especially are such declarations incompetent to impeach the consideration expressed in a deed, executed by the vendor.

Writ of error to the circuit court of Pulaski county.

THIS was an action of replevin for a slave, determined in the circuit court of Pulaski county, at the November term, 1843, before the Hon. J. J. CLENDENIN, one of the circuit judges.

The suit was brought by Jonathan Lamberton against Elizabeth A. Gray, who, after the institution thereof, intermarried with Benj. F. Gullett, and he was made co-defendant.

There were two counts in the declaration. The first in the *cepit* and *detinet* for a slave, Milla. The second, charged that in March, 1842, the defendant, Elizabeth A. Gray, received from Tapley H. Stewart, a certain other slave, called Milla, the property of plaintiff, to be delivered to plaintiff when requested, but that defendant, though often requested, refused, &c.

To the first count, the defendants pleaded *non cepit*. To both counts, they pleaded, "that before, and at the time of the alleged taking and alleged detention, the right of property in and to the possession of said slaves, was in the said plaintiff, and W. G. Saffold, T. B. Malone, in right of his wife Winifred, and J. J. Saffold, heirs at law of John Saffold, deceased, to wit: at, &c., without this that the said slaves were, or either of them was, at the said time, &c., the property of the said plaintiff," &c.

To the second count, they pleaded *non detinet*.

Issue was taken upon these pleas, the case was submitted to a jury, and the plaintiff obtained a verdict and judgment.

During the progress of the trial a bill of exceptions was taken, from which it appears:

After proving the execution thereof, by two of the subscribing witnesses, the plaintiff offered to read to the jury the following instrument, and certificates appended to it:

"Know all men by these presents, that I, John Saffold, of the county of Independence, and State of Arkansas, for and consideration of six hundred dollars, paid by Ann Saffold, the receipt whereof I do hereby acknowledge, have bargained, sold, and delivered, and by these presents do bargain, sell, and deliver, unto the said Ann Saffold, a negro girl named Milla, to have and to hold the aforesaid bargained premises unto the said Ann Saffold, her executors, administrators, and assigns forever, *only I, the said John Saffold, hold the said Milla during my life or pleasure,* and I, the said John Saffold, for myself, my executors, and administrators, shall and will warrant, and defend the same against all persons unto the said Ann Saffold, her executors, administrators, and assigns, by these presents. In witness whereof, I have hereunto set my hand and seal, this thirty-first of January, in the year of our Lord one thousand eight hundred and thirty-seven.

In presence of JOHN SAFFOLD, [SEAL.]

HENRY HEFFINGTON,

ABNER H. DODD,

WM. MARTIN."

To the above was attached a certificate of the clerk of the circuit court of Independence county, that Wm. Martin, one of the subscribing witnesses, proved the execution of the instrument before him, on the 13th October, 1841, and a further certificate that it was on that day filed in his office for recording, and duly recorded, &c.

To the reading of which instrument to the jury, the defendants objected, but the court permitted it to be read, to which the defendants excepted.

Plaintiff proved by Wm. Martin, one of the subscribing witnesses thereto, that he wrote said bill of sale, and read it to John

Saffold, and asked him if it was right? and he said it was, signed it, and delivered it and the girl, Milla, to Anna Saffold at the same time. That Jonathan Lamberton married Anna Saffold on the 2d May, 1839. That Lamberton lived with his father-in-law for some time, and when he moved to his own farm, took the girl, Milla, with him, and kept her until in February, 1842, when she was taken out of his possession. Milla was worth about $500. Old man Saffold died September 24th, 1841, and at the time of his death Lamberton had been living apart from him about two years. On cross-examination, witness stated that he saw no money paid as a consideration for Milla; that when John Saffold was asked, by a person present, if the subscribing witnesses ought not to see the money paid, he replied that he had acknowledged the receipt of the money in the bill of sale, and that it was nobody's business whether he had received it or not. Anna Saffold was about 16 years of age when the bill of sale was made, and she and Milla, the slave, remained at her father's until she married Lamberton.

Tucker, a witness for plaintiff, stated that Lamberton had had the slave, Milla, about two years in his possession before she was taken from him. That Milla left her master's, in company with other negroes, in February, 1842. That he and others pursued them, and found them at Mrs. Gray's. Mrs. Gray said Milla was there, with 9 or 10 other negroes—that Tapley H. Stewart had delivered them to her. John F. Saffold demanded Milla, but Mrs. Gray claimed her, and said she intended to keep her until taken from her by law.

John H. Saffold, witness for defendant, stated, that the bill of sale was made 30th January, 1837—his father died in September, 1841—Anna Saffold kept the bill of sale in her trunk while she lived at his father's, and took it with her when she married and went to live separate, and also took the negro with her. That the bill of sale was executed when his father had been very sick, and was partially recovering—he recovered entirely of that sickness. That the girl, Milla, was at Mrs. Gray's in February, 1842—he demanded her for Lamberton, but she said she would not give her

up until she was recovered by law—Mrs. Gray lived in Pulaski county.

The defendants offered to read, as evidence, to the jury, the deposition of Wm. Byers, to which the plaintiff objected, the court excluded it, and the defendants excepted.

The deposition, in substance, follows—it was regularly taken—the objection was to its subject matter:

"About the 1st March, 1837, witness called at the house of John Saffold, in the county of Independence, and remained all night. He informed witness that he had just recovered from a severe attack of sickness. That during his sickness he had had some uneasiness of mind, as to how he should dispose of his property, in a manner that his children would not go to law about it. Witness told him he had better make a will. To this he objected, saying it would only be making *picking* for lawyers. He then told witness that while sick, he had procured William Martin, Esq., to write bills of sale of his negroes to his children, that were then about home, viz. Anna Saffold, his daughter, who has since intermarried with the plaintiff in this suit, and to John F. and James F. Saffold. He then pointed out the negro girl he had made a bill of sale of to Anna—witness thinks her name was Milla, but does not recollect distinctly. Saffold then stated to witness that he had not delivered the bills of sale to his children, but intended they should have been delivered if he had died; but he believed it the duty of every man to keep his own property until his death. Witness believed the bill of sale that Saffold then named as having been made (and which he then said he had in his possession) conveying the negro girl to his daughter, Anna, was the same that was proved, by said William Martin, before the clerk of the circuit court of Independence county, on the 13th October, 1841, and which bill of sale is dated 30th January, 1837, and recorded in the Recorder's office of Independence county, &c., and which was filed for record after the death of Saffold. Witness understood Saffold to say that there was no consideration received by him from the said Anna, &c., only that they were his children. Cross-examined—witness did not see the bills of sale, and knew nothing

about them, except what Saffold told him; but had examined those on record, and believed them the same described to him by Saffold."

The defendants moved the court to instruct the jury as follows, which the court refused, and the defendants excepted, viz:

"That the instrument read in evidence does not operate as a bill of sale or deed of gift *inter vivos*, because it expressly provides that said John Saffold was to hold the negro during his life or pleasure. Also, that the instrument read in evidence, executed by John Saffold, is neither a bill of sale or deed of gift, nor is it valid as a *donatio causa mortis*, but is void. Also, that at the time this suit was instituted, negroes were real estate, by the law of this State, and the action of replevin cannot be maintained therefor."

The plaintiff moved the following instructions to the jury, which the court gave, and the defendants excepted:

"That prior to the act of 1840, the title to slaves passed by delivery, as other personal property, which they then were. Also, that prior to the year 1840, if a father on the marriage of his daughter, sent a slave home with her, it is *prima facie* evidence of a gift to her, if he permits it to remain there during his life time without showing any contrary intention."

The defendants brought the case to this court by writ of error.

ASHLEY & WATKINS, for the plaintiffs. 1. The plaintiffs submit that when this suit was instituted, negroes were real estate, as broadly as language could make them, and could be acquired as real estate. *Act of 28th December*, 1840. The action of replevin could not be maintained for them.

2. That the instrument purporting to be bill of sale from John Saffold to Anna Saffold, was improperly admitted in evidence. It is inconsistent and void on its face as a bill of sale. It cannot be evidence as a deed of gift, because not recorded, and the subsequent possession of the donor. It is not a *donatio causa mortis*, because of the attendant circumstances and the subsequent recovery of the alleged donor. And the best evidence of this error is, that the plaintiff below, in the leading instruction which he asked

for to the jury relied upon a parol gift, acompanied by *delivery*, of which no evidence could have been admitted, while he relied upon the written evidence of sale.

3. The court improperly excluded the deposition of Byers. It was as competent to throw light upon the transaction and explain the attendant circumstances as the testimony before introduced by the plaintiff below, in reference to the same matter. 1 *Greenleaf Ev.* 316, *sec.* 277.

PIKE & BALDWIN, on the same side. Two questions present themselves: could replevin be maintained for a slave in March, 1842? Was the instrument on which the plaintiff's cause depended, valid as a bill of sale, deed of gift, or *donatio causa mortis?*

Negroes have no character as property except such as is stamped upon them by the municipal law. By the law of nature they are not property. Up to 28th December, 1840, the law declared them to be *personal* property, but on that day it was enacted that "slaves are hereby declared to be, and hereafter shall descend and be holden as real estate." Acts 1840, p. 118. This provision repealed all former acts making them personal property. What character then was stamped upon them by law? They remained property, movable property, but not personal property. They became real estate. A demise after that, of all one's personal property would not have passed his negroes; and no law applicable to personal property alone would include them. The action of replevin is given when "any goods or chattels are wrongfully taken or wrongfully detained." Were negroes goods or chattels when this suit was brought? They were not so by the law of nature; and the statute expressly declared them to be real estate, to descend and be holden as real estate. Second, was the instrument relied on, valid as a bill of sale, or deed of gift *inter vivos?* The grantee is a minor, one of the old man's children—the old man is sick when he executes it—no consideration passes. Possession may have been given, but child and negro remain with the old man. It could not be a sale—it was not between parties competent to contract—the child could not buy from the father, for he

had nothing wherewith to pay and was incapable of contracting. Whatever he earned belonged to his father. *Shute vs. Dorr*, 5 *Wend.* 205.

The evidence clearly shows that there was no consideration except natural love and affection. The instrument, if it operates then at all inter vivos, must operate as a gift: and what was necessary to constitute it a valid gift? That it should be acknowledged or proved by two witnesses within three months after execution, unless possession should bona fide accompany it. *Ter. Dig.* 267, 527. *Hynson vs. Terry*, 1 *Ark. R.* 83. As a gift it would not pass title as between donor and donee, unless the deed was duly acknowledged or proven and recorded. *Hynson vs. Terry, ut sup. Pyle vs. Maulding*, 7 *J. J. Marsh.* 202. *Cordall vs. Gibbon*, 1 *Lev.* 18. *Ande. Moore*, 34, *pl.* 113. *Dimmock's case, Hob.* 136. *Sir R. Haywood's case*, 2 *Co.* 36, *a. Winchcombe vs. Bp. of Winchester, Hob.* 165. *Duke of Somerset's case*, 3 *Dyer*, 355, *a.*

The deed in this case was inoperative—a mere nullity and should have been excluded from the jury: no limitation or reservation in case of a sale or gift of a slave could be raised unless by deed duly recorded. *Hynson vs. Terry.* The deed was not valid for any purpose. *Wallis vs. Wallis*, 4 *Mass.* 135. *Welsh vs. Foster*, 12 *id.* 93. *Pray vs. Pierce*, 7 *id.* 384.

Every estate whether present, in reversion or remainder, must have a certain commencement, dependent on a fixed, particular event. It was not a gift; for a gift has no reference to the future, but goes into immediate and absolute effect; without delivery the gift is invalid. *Hynson vs. Terry. Noble vs. Smith*, 2 *J. R.* 52. *Pearson vs. Pearson*, 7 *id.* 26. *Grangiac vs. Arden*, 10 *id.* 293. *Cook vs. Hustead*, 12 *id.* 188. *Pyle vs. Maulding*, 7 *J. J. Marsh.* 202. *And see Ward vs. Turner*, 2 *Ves. Sr.* 431. *Tomkyns vs. Ladbrooke, id.* 591. *Tate vs. Hilbut*, 2 *Ves. Jr.* 111. *Autrobus vs. Smith*, 12 *Ves.* 39. Delivery means something more than a mere pro forma handing over in presence of witnesses—to be operative it must be absolute. The right of possession remained in the old man. *Smith vs. Smith*, 2 *Str.* 955. *Irons vs. Smallprice*, 2 *B. & Ald.* 551. *Bunn vs. Markham*, 2 *Marsh.* 532. *Hawkins vs. Ship-*

pen, 5 *B. & C.* 228. 2 *Saund.* 47, *a. note. Taylor vs. Fire Department,* 1 *Edw.* 296. *Fink vs. Cox,* 18 *J. R.* 145. *Taylor vs. Lendy,* 9 *East.* 49. *Coltinett vs. Mirsing,* 1 *Mad.* 176. *Harten vs. Gibson,* 4 *Desaus.* 142. *Pennington vs. Patterson,* 2 *Gill. & John.* 208.

There must be a continuing possession. Resuming the possession ends the gift. *Burne vs. Markham,* 7 *Taunt.* 224. *Bryson vs. Brownrigg,* 9 *Ves.* 1. *Thorald vs. Thorald,* 1 *Phillimon,* 1. *Roper on Leg.* 26. *Just. Inst. tit.* 7 *de don. Miller vs. Miller,* 3 *P. Wms.* 357. *Gardner vs. Parker,* 3 *Madd.* 184. *Lawson vs. Lawson,* 1 *P. Wms.* 441. 1 *Roper,* 39, 40, 41. *Walter vs. Hodge,* 2 *Swanst.* 92. *Edward vs. Jones,* 7 *Simons,* 325. 1 *Mylne & Craig,* 226. *Raymond vs. Selleck,* 10 *Conn.* 480. The instrument was made during a sickness of which the old man recovered, and lived years after.

OLDHAM, J., delivered the opinion of the court.

By the act of the legislature of 1840, slaves are declared to be real estate, and are thereafter to descend and to be holden as such. By this act they descend to the heir and not to the administrator, and are to be conveyed and held by the same title as real estate. It was beyond the power of the legislature to change their nature, which was never designed to be done, but it was only designed to change their mode of descent and the title by which they should be held. It was not intended to deprive the owner of the common and appropriate remedies then in use, for the recovery of the possession of such property when unjustly deprived of it, or for the recovery of damages for injuries inflicted upon it. Any other construction would render the act an absurdity. The idea of bringing an action of ejectment for the recovery of the possession of a slave, would be, to say the least, novel and extravagant. In Kentucky, under a statute similar to our own, it was held that detinue was an appropriate remedy in such cases. *Cox vs. Robertson's ex'rs,* 1 *Bibb,* 604. *Stamps vs. Beatty, Hard. R.* 337. *Grimes vs. Grimes adm'rs,* 2 *Bibb,* 594. In this case the action of replevin would well be as proper a remedy.

The plaintiff proved the possession of the property by Lamberton, a delivery by Stewart to Mrs. Gullett while a feme sole, and demand of her, and a refusal to deliver, as well as the value of the slave and the value of her hire. In the absence of the plea of property, this proof would have been sufficient to justify a recovery under the general issue of *non detinet.* The only remaining question is, whether the proof showed the title to be in the plaintiff or in Saffold's heirs.

The plaintiff produced a bill of sale, upon the trial, conveying the slave to his wife, while sole, by John Saffold, for the consideration of six hundred dollars, containing a reservation to the following effect: "only I, John Saffold, hold the said Milla during my life or pleasure." The execution and delivery of the bill of sale, as well as the delivery of the negro to Mrs. Lamberton, were proven by one of the subscribing witnesses. What effect is to be given to that reservation? Is it of such a character as wholly to defeat the grant? Or is it repugnant to the preceding part of the instrument and therefore void? Or shall effect be given both to the reservation and the grant?

The instrument cannot be considered or construed as a gift, for it does not purport to be such; nor is it a *donatio causa mortis,* not being a death-bed disposition of property. It can only be considered as a grant made upon a valuable consideration, expressed upon its face. The parties are estopped to deny the consideration thus expressed. *Pewet & Wife vs. The Monson and Burnfield Manufacturing Company,* 3 *Mason C. C. R.* 347. And we are therefore not authorized to infer that no consideration was actually paid.

It is not correct that because Mrs. Lamberton was a minor at the date of the contract, she was incapable of contracting. An infant may contract, but may avail himself of his non-age if sued upon the contract, except in certain cases, or on arriving at maturity, may disaffirm the contract. His contracts in most cases are voidable, not void, and infancy being a personal privilege designed by the humanity of the law to protect him from the impositions to which his want of age and experience might otherwise subject him, he alone can avail himself of the privilege.

It is a rule of construction, that it ought to be made upon the entire deed; not upon any particular part of it; and such construction should be given that, if possible, every part of the deed may be operative; but if the deed cannot operate in the manner intended by the parties, such a construction should be given to it that it may operate in some other manner. *Jackson ex Dem. Troup vs. Blodget,* 16 *J. R.* 172. If the law permits a sale of personal property to take effect *in futuro,* then a construction may be placed upon this deed which will render every part of it operative, according to the intention of the parties as expressed in it. By the rules of the ancient common law there could be no future property to take place in expectancy, created in personal goods and chattels, except by last wills and testaments. "But now," says Sir William Blackstone, in his Commentaries, Vol. 2, 398, "that distinction is disregarded; and, therefore, if a man, either by deed or will, limits his books or furniture to A for life, with remainder over to B, this remainder is good." An estate of freehold could not be created by common law to commence *in futuro,* because no freehold could pass without *livery of seizin,* which must operate immediately or not at all. 2 *Bl. Com.* 166: but in this country where conveyances of real estate are by deed, and livery of seizin has never been adopted, such future estate in lands may be conveyed without a precedent particular estate to support it. *Rogers vs. Eagle Fire Co. of New York,* 9 *Wendell,* 611. In the case of *Hynson vs. Terry,* 1 *Ark. Rep.* 83, this court held that "in our country since estates in tail have been abolished, there is not the slightest difference between personal and real estates, except so far as they may be regulated by the particular statutes of the several States upon the subject; so that personal estate, as it now stands, may pass by deed or other instrument in writing duly acknowledged and recorded with a condition or reservation annexed, provided the limitation be not too remote or uncertain to be valid, or not inconsistent with the gift." If such limitations and reservations can be made in a deed of gift, it is equally true that they may be contained in a deed executed for a valuable consideration.

Where a mother conveyed a house and lot to two sons in fee,

and took back an instrument in writing, of the same date, executed by one of the grantees under seal, declaring the intention of the parties to be that the grantor should hold the property and receive the rents and profits thereof during her natural life, and covenanting to abide such agreement, it was held that the deed and the instrument were parts of the same contract, and that the grantor had an estate for life in the premises. *Jackson vs. McKenney,* 3 *Wend.* 233. And so in the case of *Jackson ex Dem. Staats vs. Staats,* 11 *John. R.* 337, it was held that a deed from A to B, *habendum* to A for life and after his death to B, his heirs or assigns forever, is a valid conveyance under the statute of uses, as a covenant by the grantor to stand seized to his own use during life, and after his death to the use of the grantee and his heirs. And so in the case of *Jackson ex Dem. Wood vs. Swart,* 20 *John. R.* 85, in a conveyance to a son, the grantor and his wife reserved to themselves the use of the premises during their natural lives, it was held valid and effectual as a covenant to stand seized to the use of the grantor himself during his life, and after his death to the use of his wife for life.

Real estate and personalty being upon the same footing as to limitations and reservations contained in conveyances, as decided by this court in *Hynson vs. Terry,* it follows as a necessary consequence, that a sale of personal property may be made, a future estate created in the property, with the right of possession retained in the vendor for life, or a shorter period, in the same manner and to the same effect as in real estate. This view of the question in this case will give that effect to the intention of the parties, which the language of the deed or bill of sale imports—the immediate transfer of the right of property with the right of future possession, the vendor retaining to himself the possession and use during his natural life or pleasure. The case of *Caines & Wife vs. Marly,* 2 *Yer. Rep.* 582, and authorities there cited are conclusive upon this question.

But if the deed cannot so operate as to give effect to the entire intention of the parties, to decide that the reservation in the deed destroys its effect as a conveyance would be at variance with all

the rules of construction by which courts of law are governed in such cases. The deed should be so construed that it may operate in some manner, and the reservation, being repugnant, should be disregarded and held as void. If in a deed there be two clauses, so totally repugnant to each other, that they cannot stand together, the first shall be received and the latter rejected. 2 *Black. Com.* 381. But, as before stated, such is not the fact in this case.

It appears from the evidence that Saffold never asserted any claim to the possession of the slave in his life time under the reservation contained in the bill of sale, but delivered possession of her with the bill of sale, and after the marriage of Lamberton, upon his removal to his own farm, he carried the negro with him without opposition, and retained undisputed possession of her until Saffold's death. So the right reserved was in fact surrendered by the delivery of the negro, and Lamberton's title became full, ample, and complete.

If the bill of sale were left wholly out of consideration, yet a sufficient title was established in Lamberton upon the trial to warrant the finding of the circuit court. Martin proves that Lamberton and his wife were married in 1839, and that upon their removal to his own farm, they carried the girl, Milla, with them, and kept her until sometime in February, 1842, and that old man Saffold died in September, 1841. The same facts are proved by Tucker. During this whole time his right to the negro was never questioned by his father-in-law, during his life time, nor by his heirs after his death, and John F. Saffold, one of the heirs, in whose right the defence is made, upon being introduced as a witness for the appellants, admitted the validity of Lamberton's title, by stating that he made the demand for him. The delivery of the slave to Mrs. Lamberton, the subsequent and undisputed possession by her husband after marriage, with the acquiescence of her father during his life, and of his heirs after his death, are circumstances affording strong, if not conclusive evidence of title. *Farrell vs. Perry,* 1 *Haywood Rep.* 2. *Carter's Exrs. vs. Rutland, id.* 97. *Ferguson vs. Alcorn et al.,* 1 *B. Mon.* 160.

Under the facts, as presented by the record, to permit the plain-

tiffs to defeat the recovery of Lamberton under the pretence that the slave in question belongs to the heirs of Saffold, dec'd, would be to defeat the plain and palpable ends of justice, and would justly render the judicial tribunals of the State obnoxious to the charge of being engines of fraud and oppression, instead of forums to which every man may confidently appeal for redress, when injured in his reputation, person, or estate. Such a pretence is entitled to no favor. The defendants have no title or claim to the property, and set up none, but are litigating the claims of persons, who, so far from setting up such claims in person, one of them at least, as a witness in open court, substantially disavows any such claim or title. And in fact, he appears to have been the active agent for Lamberton in the whole transaction; he pursued the slave when run off by Stewart, from Independence county, and left at Mrs. Gray's, (now Mrs. Gullett), made a demand of her for the negro in Lamberton's name, and failing to obtain possession, made the affidavit to procure the issuance of the writ of replevin, and joined in the replevin bond to procure the execution of the writ. It would be strange, indeed, if a recovery could be defeated under color of the claim of a third person, who has gone so far as agent and witness to disavow all such claim upon the record. If Lamberton ought not to recover in this case, it is difficult to conceive one which a party would be justified in asserting in a court of law.

The circuit court also properly excluded the deposition of Byers: but even if it had been done improperly, his deposition could not, and should not have altered or changed the result of the trial. The deposition contains nothing but the statements of old-man Saffold, in his life time, relative to a bill of sale, and whether made before or after the execution of the bill of sale produced to prove title in this case, are wholly inadmissible, as not constituting a part of the *res gestae*. The title of a purchaser cannot be impaired or in anywise affected by the admissions or mere statements of the vendor in his absence. Much less can it be affected by the vendor subsequently declaring, in the absence of the purchaser, that it was executed without consideration, when a valuable consideration is

expressed in the deed, and which is conclusive upon the parties for all the purposes of its own efficacy.

Viewing the case in every possible aspect, we can see no ground whatever for disturbing the decision and judgment of the circuit court, but the strongest and most substantial reasons why the judgment should be affirmed.