DARDENNE *vs.* HARDWICK.

Fraud will never be presumed in a court of law: nor in a court of equity, where the act does not necessarily import fraud, and may have as well occurred from a good as bad motive.

A purchase and sale of property, for a valuable consideration, accompanied by a bona fide change of property and possession, without proof of fraud in which both parties participated, the law will not presume as being made with intent to hinder, delay or defraud creditors.

A purchase of property from a debtor, for the purpose of defrauding his creditors, is void: but a man, no matter how much indebted, may sell his property, and the mere circumstance of indebtedness is no evidence of fraud.

Appeal from Jefferson Circuit Court.

The plaintiff instituted suit, by attachment, against James Moseley, in the Circuit Court of Jefferson county, before the Hon. WM. H. SUTTON, judge. The writ was levied upon five negroes in the possession of Garland Hardwick, as the property

of the defendant, Moseley. Hardwick appeared and filed his interplea claiming the negroes so attached; the plaintiff replied that the negroes were not the property of the interpleader, but of the defendant: the case was submitted to a jury, who rendered a verdict for the interpleader. The plaintiff moved for a new trial, which was refused; he excepted, and appealed to this court.

The bill of exceptions states that Hardwick read, in evidence, a duly executed bill of sale from Moseley, to him, for the negroes attached, and some twelve others, bearing date before the issuance of the writ: he proved the execution of the bill of sale by the subscribing witness, the payment of $3,000, part of the consideration, and a note for the balance, and the delivery of the negroes: he also proved that Moseley still had some other property, and also the lands purchased by him of the plaintiff; the purchase money for which, in part, constituted the indebtedness sought to be made in this suit. He also proved that the consideration agreed to be paid for said negroes, $5,000, was their full value; that the whole consideration, except $1,635.75, was paid in cash, and the remainder was secured by note and security: that the interpleader, at the time of the purchase, was aware of the indebtedness of the defendant to the plaintiff; and that the plaintiff knew, at the time and before the purchase of the negroes, that the interpleader intended to purchase them, and applied to the agent of the interpleader to pay his debt in the event of the purchase, which the agent agreed to do, if the defendant would consent to it.

The plaintiff asked the court to instruct the jury "that fraud may be presumed when a party sells all of his property being largely indebted at the time, when the purchaser had full knowledge at the time of said sale, and when the party selling does not apply the said money to the payment of any of his debts:" but the court refused to give this instruction, and gave the following: "1st. That if they believe, from all the circumstances of the case, that the purchase of Hardwick, from Moseley, of the negroes in question, was done for the purpose of defrauding

Moseley's creditors, the purchase is void, and the negroes are subject to the plaintiff's demand: 2d. That the issue to be tried is the right of property, and the jury must find to whom the negroes belong, from all the evidence in the cause: 3d. That a man may sell his property, real and personal, no matter how much he is indebted, and that the mere circumstance of indebtedness is no evidence of fraud." The defendant also asked the following instruction, which was overlooked by the court: "If the jury believe, from the circumstances, that the sale was made to defraud one creditor, it is void against all the other creditors."

YELL, for the appellant, contended that it appeared, from the evidence, that the sale was made to the appellee for the express purpose of defrauding the appellant of his debt; and that the fact was known to the agent and attorney of the appellee; and to show that knowledge of such intent by the agent was equivalent to knowledge by the principal, cited 9 *J. R.* 163. *Com. on Con.* 763. *Chit. on Con.* 210, 211, 72, 215; that fraud may be proven by direct or circumstantial testimony, 8 *Yerg.* 484; that the actings, doings, and declarations of the party are all evidence to establish fraud, *Crary vs. Sprague,* 12 *Wend.* 41; that if the purchaser do any act to defeat the creditors of the vendor, it makes the sale void even if he pays full price for the property, 8 *J. R.* 446. *Hickman vs. Miller,* 12 *J. R.* 320. 9 *Cow.* 73. 7 *Peters,* 348. *Pet. C. C. R.* 460; that the onus of proof is on the purchaser to show that the sale is fair, and for a *bona fide* consideration, 3 *Yerg.* 502; that the court was bound to give or refuse to give all the instructions asked, and the omission to do so is cause for reversal.

S. H. HEMPSTEAD, contra. The sale of the slaves was public and notorious, and the full value of them was paid to the vendor, in consideration of which they were actually delivered to the purchaser, accompanied by a regular bill of sale acknowledged and recorded. There is not even the shadow of proof of any design to hinder, delay, injure, or defraud, any creditor.

Apply to the transaction the rigid doctrine of *Twyne's case,* 3 *Co.* 80, and it will stand the test. *Long on Sales,* 104, 105. It is true that the vendor was indebted to the plaintiff, and which fact was also known to the vendee: but do these circumstances invalidate the sale? If so, simple indebtedness would constitute in reality a greater impediment to the alienation of property than any which existed under the feudal system.

The true rule upon this subject is, that a sale, upon a valuable and adequate consideration, accompanied by a *bona fide* change of possession, is valid, and cannot be impeached by creditors. *Wheaton vs. Sexton,* 4 *Wheat.* 503. 4 *Cond. Rep.* 521. *Holbird vs. Anderson,* 5 *Term Rep.* 235. *Beals vs. Guernsey,* 8 *J. R.* 452. *Chit. on Con.* 412.

It is a familiar principle that fraud cannot be presumed, but must be expressly proved and found. *Conrad vs. Nicol,* 4 *Peters,* 297. *United States vs. Arredondo,* 6 *Peters,* 716. *Gregg vs. The lessee of Sayre,* 8 *Peters,* 244. *Clarke vs. White,* 12 *Peters,* 196. This whole question was fairly submitted to the jury, and their verdict negatives the idea of any fraud in the case, which is conclusive upon all parties. *Prentiss vs. Slack,* 1 *Hill,* 467.

SCOTT, J. We find no error in this record relating to the instructions given by the court below, to that refused, or to that asked and omitted to be given from having been overlooked, as shown in the bill of exceptions. The instructions given were proper under the evidence: that asked and refused was properly refused. Fraud will never be presumed in a court of law, although a somewhat different rule prevails in a court of equity; but even there, where an act does not necessarily import fraud, and may have as well occurred from good as bad motives, fraud will not be inferred. 8 *Peters,* 253.

The instruction asked to be given, but omitted by oversight, was embraced in those that were given to the jury. The verdict and judgment seem clearly warranted by the law and the testimony. A purchase and sale, upon an adequate and valuable consideration, accompanied by a *bona fide* change of property

and possession, are clearly established by the testimony. Of such a contract, without proof of fraud in which both parties participated, it cannot be predicated that it was made with intent to hinder, delay, or defraud creditors, within the meaning of the statute, which has been universally considered as but an exposition of the common law. *Wheaton vs. Sexton,* 4 *Wheat. R.* 503. *Sands vs. Hilbreath,* 14 *John.* 498.

All the circumstances of this case, insisted on as tending to show such fraudulent intent, have been passed upon by a jury properly instructed, who have determined by their verdict against the supposed fraud; and, after looking closely at the evidence, we see no reason to disturb the verdict and judgment. The plaintiff had full knowledge of a desired purchase,—was advised of the progress of the negotiation to effect it. The evidence shows a *bona fide* desire to purchase the property, an actual purchase for an adequate price, on which a large portion of the purchase money was paid down, and a note given for $1,635.75, the residue, due some months after date. The note, (leaving out of view the consideration that the money paid was a substitute for the property,) added to the land and the other property shown by the testimony not to have been sold by Moseley, seeming amply sufficient to satisfy the debt of Dardenne, fully rebuts any circumstances in proof going to show, on the part of the purchaser, any participancy in any fraud that might have been intended by Moseley.

In our opinion, therefore, the motion for a new trial was properly overruled, and the judgment of the court below must be affirmed with costs.