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Recent Cases

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FRAUDULENT CONVEYANCES—ACTION BY GRANTOR TO SET ASIDE

Cook v. Mason[1]

The plaintiff, fearing that she would be sued by her adopted daughter for assault and battery, conveyed realty to her brothers without consideration, with the understanding that the grantees would deed it back when the matter was settled. She retained possession and paid the taxes. The daughter did sue but failed to recover on the ground that she never had a cause of action, because of the doctrine that an unemancipated minor child has no right of action in tort against a parent. Plaintiff brought this suit in equity to set aside her voluntary conveyance. The defendants contended the conveyance was in fraud of a creditor and that the grantor was therefore precluded from seeking the aid of a court of equity. The plaintiff succeeded in the trial court. The Missouri Supreme Court affirmed the lower court, ordering a cancellation of the deed to the brothers on the ground that no creditor or potential creditor existed at the time of the conveyance and, therefore, there was no fraudulent conveyance, hence the plaintiff was guilty of no wrong.

In *Chambers v. Chambers* the court voiced the general rule that "Courts of equity are chary of reaching out a helping hand to those litigants who voluntarily put themselves in the predicament of this plaintiff by a voluntary conveyance of land to hinder, delay, or defraud creditors."[2] The debtor who conveys property on the promise of the grantee to reconvey when danger of attachment is passed, or the debtor who purchases property and has title placed in a third person with the understanding that there is to be a conveyance to the debtor-purchaser at a later date is, with a few exceptions, denied the assistance of equity in enforcing the agreement (if written), in setting the conveyance aside, or in having a constructive or resulting trust declared.[3] Exceptions occur where the grantee is the moving

1. 185 S. W. (2d) 793 (Mo. 1945).
2. 227 Mo. 262, 286, 127 S. W. 86, 93 (1910).
3. Copland v. Commissioner of Internal Revenue, 41 F. (2d) 501 (C.C.A. 7th, 1930); Baird v. Howison, 154 Ala. 359, 45 So. 668 (1907); Withrow v. National Surety Co., 122 Cal. App. 242, 10 P. (2d) 83 (1932); Italian-American Bank v. Lepore, 79 Colo. 466, 246 Pac. 792 (1926); Dixon v. Tucker, 167 Ga. 783, 146 S. E. 736 (1929); Jolly v. Graham, 222 Ill. 550, 78 N. E. 919 (1906); Cloud v. Malvin, 108 Iowa 52, 75 N. W. 645 (1898); Reed v. Robbins, 58 Ind. App. 659, 108 N. E. 780 (1915); Hall v. Hall, 230 Ky. 351, 19 S. W. (2d) 988 (1929); Creamer v. Bivert 214 Mo. 473, 113 S. W. 1118 (1908) (exceptors to the general rule recognized); Chambers v. Chambers, 227 Mo. 262, 127 S. W. 86 (1910); Jones v. Jefferson, 334 Mo. 606, 66 S. W. (2d) 555 (1933); Barhan v. Bogard, 128 Ore. 218, 270 Pac. 762 (1928); Van Allsburg v. Kooyers, 250 Mich. 518, 230 N. W. 924 (1930).

party and induces the conveyance, or where no creditor is defrauded by the conveyance, either because there was no creditor in fact or because, although a creditor existed, he was not defrauded by that particular conveyance.

Where the grantor endeavors to set aside a fraudulent conveyance, equity denies relief as he fails to come into equity with clean hands—or because the parties are *in pari delicto.* The court leaves the parties where it finds them. Active participation[4] by the grantee in inducing the grantor to convey his property to defraud his creditors prompts the courts to make an exception to the "clean hands" doctrine and allow the grantor to prosecute successfully his action to set the conveyance aside.[5] Although the grantor's hands are unclean because of his fraudulent intent, that intent was induced by the grantee and to heed the defense that the grantor cannot seek the aid of equity due to his fraudulent intent would be to lend equity's aid to the more guilty of the two. The courts find, therefore, that while the grantor is *in delicto,* he is not *in pari delicto.*

The second exception to the general rule is that expressed in the case under discussion. Many courts, despite the grantor's admitted intent, find there is no fraudulent transfer if no creditor is defrauded, either because there was no creditor in fact[6] or because, although a creditor existed, he was not defrauded by the con-

4. Active participation by the grantee may take any form from his taking advantage of the trust and confidence reposed in him to the case where through active fraud he induces the transfer by the grantor. A factor which cannot be ignored and which is present in the vast majority of the cases is the close relationship between the grantor and grantee. The mere fact of relationship creates a presumption, however slight, of influence by the grantee so that little else in the way of active participation by him is necessary to a finding that he was the inducing party. Boyd v. DeLa Montagnie, 73 N. Y. 498, 502 (1878) ("A court of equity will interpose its jurisdiction to set aside instruments between persons occupying relations in which one party may naturally exercise an influence over the conduct of another. A husband occupies such a relation to the wife. . . . When this relation exists the person obtaining the benefit must show, by the clearest evidence, that the gift was freely and deliberately made. The burden is upon the person taking the gift to show that the transaction was fair and proper.").

5. Hutchinson v. Park, 72 Ark. 509, 82 S. W. 843 (1904); Donnelly v. Rees, 141 Cal. 56, 74 Pac. 433 (1903); Duncan v. Dazey, 318 Ill. 500, 149 N. E. 495 (1925); Brant v. Brant, 115 Iowa 701, 87 N. W. 406 (1901); Harper v. Harper, 85 Ky. 160, 3 S. W. 5 (1887); Roman v. Mali, 42 Md. 513 (1875); O'Conner v. Ward, 60 Miss. 1025 (1883); Holliway v. Holliway, 77 Mo. 392 (1883); Snitzer v. Pokres, 324 Mo. 386, 23 S. W. (2d) 155 (1929); Wright v. Brown, 177 S. W. (2d) 506 (Mo. 1944); Boyd v. DeLa Montagnie, 73 N. Y. 498 (1878); Place v. Hayward, 117 N. Y. 487, 23 N. E. 25 (1889); Pinckston v. Brown, 56 N. C. 494 (1857); Palmer v. Foley, 305 Pa. St. 169, 157 Atl. 474 (1931); Melbye v. Melbye, 15 Wash. 648, 47 Pac. 16 (1896).

6. Dearman v. Dearman, 4 Ala. 521 (1842); Vollaro v. Gargano, 97 Conn. 275, 116 Atl. 179 (1922); Day v. Lown, 51 Iowa 364, 1 N. W. 786 (1879); Hoff v. Hoff, 106 Kan. 542, 189 Pac. 613 (1920); O'Conner v. Ward, 60 Miss. 1025 (1883) (there must be a creditor defrauded and a debtor intending to defraud before a wrongful act has been committed); Miller v. Miller, 206 Mo. 341, 103 S. W. 962 (1907); Harrety v. Kontos, 184 S. W. (2d) 195 (1944); Collins v. Schump, 16 N. M. 537, 120 Pac. 331 (1911); Tiedemann v. Tiedemann, 201 App.

veyance in issue.[7]

Some courts have taken a different approach, where the transfer was not induced by the grantee and where no creditor was defrauded, and have adopted the "clean hands" doctrine literally. They have adhered to the general rule stated above, denying relief to the grantor on the belief that public policy[8] favors punishing him by leaving him in the position in which he placed himself.[9] They feel

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Div. 614, 194 N. Y. S. 782 (1922); Smith v. Bown, 2 Hay 483 (N. C. 1797); Evans v. Evans, 180 Okla. 46, 67 P. (2d) 779 (1937); Rivera v. White, 94 Tex. 538, 63 S. W. 125 (1901); Hall v. Linkenauger, 105 W. Va. 385, 142 S. E. 845 (1928) (if a deed is made to avoid satisfaction of a possible judgment in a pending suit, the grantor may recover back the property after the suit has been decided in his favor). The Massachusetts court does not look for a creditor who is defrauded but will order a reconveyance if the plaintiff can establish his right to the property without resting his claim upon his own fraud. As no fraud is practiced on the defendant, he cannot rely on any attempt to defraud a third person. Zak v. Zak, 305 Mass. 194, 25 N. E. (2d) 169 (1940).

7. Rossow v. Peters, 277 Ill. 436, 115 N. E. 524 (1917) (assuming a conveyance to defraud creditors, but the property was a homestead and could not be reached by creditors, therefore no one was defrauded); Sallee's Ex'or v. Sallee, 18 Ky. L. R. 74, 35 S. W. 437 (1896); Cowles v. Cowles, 89 Neb. 327, 131 N. W. 738 (1911).

8. In determining whether a conveyance made with the intention to defraud creditors should be set aside because actually no creditors were defrauded, the courts and text writers speak of the transfer as being or not being against "public policy." This is only a way of stating the court's conclusion, after weighing all the various interests, whether it is better to give relief to the one who entered into a fraudulent transaction, or whether it is more important to deny relief in order to discourage fraudulent conveyances of this type, even though such policy results in unjustly enriching a transferee who is equally guilty of fraud. RESTATEMENT, TRUSTS (1935) § 422.

9. MacRae v. MacRae, 37 Ariz. 307, 294 Pac. 280 (1930). This case expressed the belief that in most cases where the grantor prevailed he did so more on grounds of confidential relationship and inducement than on the grounds that no creditor was defrauded. See *Evans v. Evans,* 180 Okla. 46, 67 P. (2d) 779 (1937), wherein the grantee knew nothing of the transfer when made. Th Arizona court, however, felt that the statute against fraudulent conveyances recognized the moral quality of the act as residing in the intention); Carson v. Beliles, 121 Ky. 294, 89 S. W. 208 (1905); Lankford v. Lankford, 117 S. W. 962, 963 (Ky. 1909) ("It matters not whether the creditor was actually injured or not"); Tantum v. Miller, 11 N. J. Eq. 551 (1858); Jackson v. Marshall, 5 N. C. 323 (1809); Pride v. Andrew, 51 Ohio St. 405, 38 N. E. 84 (1894); Capanno v. Capanno, 55 Montg. 225 (Pa. 1939); Nunnally v. Stokes, 116 Va. 472, 82 S. E. 79 (1914) (A widow, under the mistaken belief that her dower was subject to her husband's debts conveyed it to a third person, was denied relief due to her fraudulnt intnt); I BOGERT, TRUSTS AND TRUSTEES (1935) § 211, p. 618: "While it may strain the sympathies of the courts frequently, it would appear that from the point of view of expediency and policy it would be best to refuse relief under such circumstances. Such a decision will bring about the object probably foremost in the mind of the court, namely, the effective discouragement of trusts with fraudulent or illegal objects. If parties realize that, once they have engaged in such schemes, the courts will do nothing for them, no matter what the result, they will be less anxious to enter into such arrangements than if they can expect help if the plan is unsuccessful."

it is undesirable to protect the grantor who conveyed with the wrongful intention of placing his property beyond the reach of his creditors. Equity finds moral turpitude in the fraudulent intention of the grantor.[10] A sound argument can be advanced in support of this view although few opinions bother to go further than state that the grantor's suit is dismissed as he has unclean hands. The doctrine that a fraudulent conveyance is binding as between the parties but voidable at the option of the creditors was adopted to discourage such acts. For the court to set aside such a conveyance would encourage every potential defendant[11] to convey his property in trust, to be reconveyed should the suit fail. Should a judgment be obtained, the judgment debtor has placed an obstacle in the path of the creditor by forcing him to carry the burden of proving a fraudulent conveyance in order to satisfy his judgment. Should the judgment creditor fail in this effort, the debtor's fraudulent scheme would have accomplished its purpose. Should the creditor succeed, the debtor has lost nothing he would not have lost had he retained his property. Above all, should the prospective plaintiff fail to recover, under the doctrine of *Cook v. Mason*[12] the grantor is assured that he can always recover his property. With this assurance, a prospective judgment debtor might be more inclined to convey his property in hopes of successfully placing it beyond the reach of creditors. He has much to gain and nothing to lose.[13]

The courts that adopt the "clean hands" doctrine literally often ignore the fact that the hands of the grantee are no cleaner than those of the grantor. They allow the grantee to point to the fraudulent act of the grantor wholly ignoring the fact that the act would have been impossible without his participation. Other courts do recognize the grantee's guilt, but continue to deny relief in order to discourage such conveyances by making an example of the grantor. "The object of the general rule is not to protect the fraudulent grantee, but to protect society, and its purpose cannot be achieved without allowing the grantee to retain his ill-gotten gain; and it is founded on public policy and not because the transaction is approved."[14] Further justification for this is found by stating that, while the grantee is a party to the fraud, he is not seeking the court's aid.[15] Equity simply dismisses the suit of the one seeking aid of the court in order to obtain the fruits of his own fraud,

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10. Carson v. Beliles, 121 Ky. 294, 89 S. W. 208 (1905).

11. It is not neceassry that there be an ascertained debt owing by the grantor at the time of his conveyance in order to make the deed voidable by creditors. Creamer v. Bivert, 214 Mo. 473, 113 S. W. 1118 (1908); Jones v. Jefferson, 334 Mo. 606, 66 S. W. (2d) 555 (1933).

12. 185 S. W. (2d) 793 (Mo. 1945).

13. I BOGERT, TRUSTS AND TRUSTEES (1935) § 211, p. 619: "If the court helps the settlor out when his wrongful scheme has been unsuccessful, he can be fairly well assured of some satisfactory result in all events. Either the trust will perpetrate the fraud or other wrong, or the trust will be unsuccessful, the settlor can ask an undoing of his transfer, pretend repentance, and get relief."

14. 37 C. J. S. *Fraudulent Conveyances* § 267.

15. Capanno v. Capanno, 55 Montg. 225 (Pa. 1939).

even though it results in giving the entire benefits of the fraud to an equally culpable party.[16]

Despite the strength of the arguments just given in favor of denying relief to the grantor who had a fraudulent intent, most courts feel that if no creditor has been defrauded the case should not be decided through the mechanical application of such maxims as *in pari delicto* or "one must come into equity with clean hands." As a choice must be made between one of two equally guilty parties who have harmed no one, and since the interests of third parties are not involved, the better solution can be attained by looking to the circumstances of each case and decide how best to serve the interests of all involved. Does social advantage favor benefiting the fraudulent grantee even though no creditor has been defrauded? Should the grantee be allowed to reap the profits of his own participation in the attempted fraud? The Missouri court thinks that the fraudulent grantee should not be protected in those cases where no creditor existed to be defrauded by the conveyance. It is felt that a more equitable result is attained by looking to the effect of the conveyance on creditors, rather than by looking solely at the grantor's motives, as is done by the courts that follow the "clean hands" doctrine strictly.

The Missouri statute states that "every conveyance . . . made or contrived with the intent to hinder, delay or defraud creditors . . . shall be . . . as against said creditors . . . void."[17] This statute affects only conveyances made by "debtors," so that when no creditor exists, the grantor has done no wrongful act and should be entitled to set the conveyance aside,[18] obtain specific performance of a written agreement to reconvey,[19] or require the grantee to hold in trust for him.[20] No social policy is thought to be thwarted by an intent which worked no injury to creditors. Persuasive authorities such as the *Restatement of Trusts*[21] and Professor Scott agree with the analysis adopted in the principal case.[22]

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16. Clemens v. Clemens, 28 Wis. 637, 654 (1871) ("The principle or policy of law, therefore, is to reject the suit of and reprove the plaintiff for his wrong, not to reward the defendant. The plaintiff must be punished, even though it be at the expense of allowing the defendant, an equally guilty party, to obtain most unjust and unfair advantage for himself.").

17. MO. REV. STAT. (1939) § 3507.

18. Cook v. Mason, 185 S. W. (2d) 793 (1945).

19. Bouton v. Beers, 78 Conn. 414, 62 Atl. 619 (1905) (The deed contained an agreement to convey back on payment of a stipulated nominal sum).

20. Rivera v. White, 94 Tex. 538, 63 S. W. 125 (1901).

21. § 63, comment on subsection (1): "Thus, if a person, believing that he is liable in tort to a third person for an act of his employee, transfers his property to another who agrees to hold it in trust for him and the purpose of the transferor in making the transfer was to prevent the third person from attaching the property, the transferor can compel the transferee to reconvey the property if in fact he was not liable to the third person, although he believed he was liable."

22. I SCOTT, TRUSTS (1939) § 63: "Where the owner of property transfers it in trust for himself for the purpose of avoiding a claim against him which he believes to be and which is in fact not an enforceable claim, the trust is not illegal.

REAL PROPERTY—RIGHT OF CO-TENANT TO OPEN MINE

Davis v. Byrd[1]

Plaintiff, owner of an undivided half interest in certain lands, sought a permanent injunction against the owners of the other undivided one-half interest, and their lessees, from prospecting, mining, and removing mineral ore from the land. *Held*: Injunction denied. One cotenant may mine the common property or lease it for mining purposes, provided that in so doing he does not seek to, or in effect, exclude his cotenant from equal participation in the profits of the property.

This case, which is one of first impression in the Missouri Appellate Courts, presents the following questions: (a) Does one cotenant in a tenancy in common have sufficient title to open a mine over the objection of his cotenant? (b) Does such conduct constitute waste?

The authorities are divided.[2] In support of its theory, the court cites numerous cases[3] but relies principally upon *Prairie Oil & Gas Co. v. Allen*,[4] where it is stated that "since an estate of cotenant in a mine or oil well can only be enjoyed by removing the products thereof, the taking of mineral from a mine and the extraction of oil from an oil well are the use and not the destruction of the estate." The court in the principal case, like the court in the *Prairie Oil* case, quotes with approval the statement in *McCord v. Oakland Quicksilver Min. Co.*[5] that "... so

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By the weight of authority it is held that the trust is not illegal if the claim is not in fact enforceable even though the settlor believes that it is. In such a case his state of mind is as bad as though the claim were enforceable, but the courts hesitate to impose upon him the penalty of forfeiting his interest in the property."

1. 185 S. W. (2d) 866 (Mo. App. 1945).

2. The owner of an undivided 1/768 interest in the oil and gas under a tract of land sought to enjoin the lessee of all the remaining interests from taking oil and gas. The action was brought even though the lessee assured the plaintiff that an accounting of the royalties on his share would be made. *Held*: Although the plaintiff's interest was small in comparison with the other cotenants, an injunction is sustained on the ground that the taking of oil and gas by the cotenant was waste, and an irreparable injury. Law v. Heck Oil Co., 106 W. Va. 296, 145 S. E. 601 (1928); Zeigler v. Brenneman, 237 Ill. 15, 86 N. E. 597 (1908); Clark v. Whitfield, 213 Ala. 441, 105 So. 200 (1925); Williamson v. Jones, 43 W. Va. 562, 27 S. E. 411 (1897).

3. Watson v. Union Red & Gray Gravel Co., 50 Mo. App. 635 (1892); Metzger v. Metzger, 153 S. W. (2d) 118 (1941); McCord v. Oakland Quicksilver Min. Co., 64 Calif. 134, 27 Pac. 863 (1883); Clowser v. Joplin Mining Co., Fed Cas. No. 2,908a (C.C.W.D. Mo., 1877); Earp v. Mid-Continent Petroleum Corporation, 167 Okla. 86, 27 P. (2d) 855, 91 A.L.R. 188 (1933); Graham v. Pierce, 19 Grat. 28, 100 Am. Dec. 658 (Va. 1869); Job v. Potton, L. R. 20 Eq. 84, 93; New Domain Oil & Gas Co. v. McKinney, 188 Ky. 183, 221 S. W. 245, 250 (1920); Burnham v. Hardy Oil Co., 147 S. W. 330 (Tex. App. 1912), affirmed 108 Tex. 555, 195 S. W. 1139 (1917); Compton v. Peoples Gas Co., 75 Kan. 572, 89 Pac. 1039, 10 L.R.A. (N. S.) 787 (1907); Silver King Coalition Mines Co. v. Silver King Consol. Mining Co., 204 Fed. 166, 1918B, Ann. Cas. 571 (C.C.A. 8th, 1913); York v. Warren Oil & Gas Co., 191 Ky. 157, 229 S. W. 114(1921).

4. 2 F. (2d) 566, 571, 40 A.L.R. 1389, 1396 (C.C.A. 8th, 1924).

5. 64 Calif. 134, 141, 27 Pac. 863, 865 (1883).

long as an estate is used according to its *nature,* 'it is no valid objection that the use is consumption, and it is no fault of the tenant that it is not more endurable'." (Italics added)

It must be noted, however, that neither in the principal case, nor in the cases upon which it relies, was any distinction observed between unmined property and mines already open. Those authorities cited by the court which are most nearly in point, concern questions of operation of mines already "in existence"[6] or questions of *opening* mines by cotenants who created the cotenancy "for that purpose"[7] with none reviewing the question of *opening* a mine upon lands by cotenant when it is not shown that that was the reason for entering into the cotenancy.

It has been observed, *obiter,* in deciding the question of whether one cotenant can exclude another from sharing in the profits received from the cotenants leasing the oil rights to another, or where suit for accounting is brought by the other cotenant, that it is proper for the cotenant to sell his interest in the minerals beneath the lands, and that the lessee of the mineral right has the right to enter and open a mine. However, none of the latter cases turn on the question, *can the cotenant keep the lessee from opening the mine?* Thus these courts have not had the occasion to decide the question directly on this point. Instead, the courts seem to have accepted the complaining cotenants acquiescence as the basis of their dicta. For if the cotenant or trespasser "... converts the oil from realty into personalty, the injured cotenant may waive the trespass, and go for the value of the oil, or for the money for which the trespasser sold it."[8]

The closest analogy to this problem may be found in the "particular estate and remainderman" cases, where it is held that the owner of the particular estate cannot *open* a mine without the consent of the remainderman,[9] for the reason that the owner of the particular estate does not have sufficient title to open the mine without liability for waste.[10] In these cases a distinction is usually observed between open and unopened mineral land, and such statements as were quoted above from the *Prairie Oil* and *McCord* cases are considered appropriate only as to the former.

The Missouri Statutes recognize the liability of a tenant in common for waste committed and hold him responsible to the other cotenants for such acts.[11] Also

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6. Prairie Oil & Gas Co. v. Allen, 2 F. (2d) 566, 40 A.L.R. 1389 (C.C.A. 8th, 1924), cited *supra* note 4; Watson v. Union Red & Gray Gravel Co., 50 Mo. App. 635 (1892); McCord v. Oakland Quicksilver Mining Co., 64 Calif. 134, 27 Pac. 863 (1883), cited *supra* note 5.

7. Earp v. Mid-Continent Petroleum Corp., 167 Okla. 86, 27 P. (2d) 855, 91 A.L.R. 188 (1933).

8. Williamson v. Jones, 43 W. Va. 562, 567, 27 S. E. 411, 413 (1897).

9. Swayne v. Lone Acre Oil Co., 98 Tex. 597, 86 S. W. 740, 69 L.R.A. 986, 8 Ann. Cas. 117 (1905), and see Fourth and Central Trust Co. v. Woolley, 31 Ohio App. 259, 165 N. E. 742 (1928); State v. Snyder, Treas., 29 Wyo. 163, 212 Pac. 758 (1923).

10. 1 SUMMERS, THE LAW OF OIL AND GAS (1927) Ch. 3, §§ 32, 83.

11. MO. REV. STAT. (1939) § 3007.

"... it appears that one who has not an absolute unqualified title is of the class who can commit waste and be held liable by the material alteration or destruction of the estate granted."[12] The bulk of the case law dealing with controversies arising between cotenants concerns itself with problems of the use and profits of the land, and the decisions almost universally have held that it is not waste for one cotenant to use the lands or take the profits therefrom as long as he doesn't exclude the other cotenant,[13] but ever since the Statute of Westminster II c. 22,[14] the courts have made it quite clear that destruction of the principal or reversionary interest does constitute waste.[15]

In the case of *Williamson v. Jones,* decided under a West Virginia statute[16] identical with that of Missouri,[17] it was held that the extraction of oil by one cotenant constituted waste. There is a difference between the cotenant who tills the entire land taking all the profits for himself, not excluding the other cotenant; and the cotenant who penetrates that same soil and takes minerals from it, retaining all the profits for himself and who also is not specifically excluding the other cotenant. Nor is it enough that he account for the profits, if opening the mine constitutes waste. The non-consenting cotenant is entitled to the preservation of his freehold. He cannot be forced to sell without partition proceedings.

It should be recognized that the result necessarily must be different in the situation where the cotenancy was entered into for the purpose of mining or where there was an open mine on the land at the time the cotenancy was created, and the situation where the land was acquired for farming, mercantile, or purposes other than mining. The opinion in the principal case fails to disclose the pertinent facts, but the prayer for an injunction against "prospecting" would seem to put the point in issue.

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12. Skipper v. Davis, 59 S. W. (2d) 454, 458 (1933).

13. Hamby v. Wall, 48 Ark. 135, 2 S. W. 705, 3 Am. St. Rep. 218 (1887); Crane v. Waggoner, 27 Ind. 52, 89 Am. Dec. 493 (1886); Thurstin v. Brown, 83 Kan. 125, 109 Pac. 784, 29 L.R.A. (N. S.) 238 (1910); Owings v. Owings, 150 Mich. 509, 114 N. W. 393 (1908); LeBarron v. Babcock, 122 N. Y. 153, 25 N. E. 253, 9 L.R.A. 625, 19 Am. St. Rep. 488 (1890); Enterprise Oil and Gas Co. v. Nat'l Transit Co., 172 Pa. 421, 33 Atl. 687 (1896).

14. 13 EDW. 1 (1285).

15. Nelson's Heirs v. Clay Heirs, 7 J. J. Marsh, 138, 23 Am. Dec. 387 (Ky. 1832); Schuster v. Schuster, 84 Neb. 98, 120 N. W. 948, 29 L.R.A. (N. S.) 224, 18 Ann. Cas. 1078 (1909); Elwell v. Burnside, 44 Barb. 447 (N. Y. 1865); Smith v. Sharpe, 44 N. C. 91, 57 Am. Dec. 574 (1852); Wilkinson v. Haygarth, 12 Q. B. 837 (1847); 5 Bac. Ab. 306; Co. LITT. 200a, 200b; FREEMAN, COTENANCY AND PARTITION (2d Ed. 1886) § 305.

16. W. VA. CODE (1943) § 3681.

17. MO. REV. STAT. (1939) § 3007.