

STRAW MEN IN REAL ESTATE TRANSACTIONS

ROBERT N. COOK†

The principles by which human conduct is judged may be classified as legal, equitable, and moral. Without determining whether all legal and equitable principles are also moral, it can be said that there are certain moral principles which will not be enforced by a court of law or equity. Yet, certain of these moral obligations make acts legal which would otherwise be illegal. Much of the following discussion will relate to these principles as applied to transfers of land to one commonly called a straw man,¹ "dummy",² or trustee of a passive or "dry" trust.

The modern straw man, "dummy", or trustee of a passive trust is simply the modern feoffee to uses. Legal historians tell us that the first uses in England were those created by the Franciscan friars in the thirteenth century to evade the rules of their order which prohibited them from owning property.³ If some one desired to convey land to a member of this religious organi-

† A.B., Bucknell University, 1933; LL.B., Duke University, 1936. Visiting Assistant Professor of Law, University of Louisville.

1. " * * mere conduit or medium for convenience in holding and passing title." *Van Raalte v. Epstein* (1906) 202 Mo. 173, 99 S. W. 1077, 1079.

"In this condition of the record the case does not call for judicial comment on the business morality of the secret and deceptive use of a 'man of straw' in real estate contracts—a questionable practice, the product of insincerity and mere commercialism. By the term 'man of straw' we understand one of no substance, one in name only, an irresponsible person having no property to respond in damages, who loans himself out to others to sign contracts as a purchaser knowing he is acting a lie—an office no honorable man should fill, and no honorable man should ask another to fill." *Houtz v. Hellman* (1910) 228 Mo. 655, 128 S. W. 1001, 1005.

2. " * * a person who holds the legal title to real property under a moral obligation to recognize another as the owner." *Hegstad v. Wysiecki* (1917) 178 App. Div. 733, 165 N. Y. S. 898, 900.

"In land office practice dummies are either fictitious persons, or those who, having no interest in the transaction, permit the use of their names for the perpetration of a fraud and sign papers and make affidavits perfunctorily." *United States v. Munday* (C. C. W. D. Wash. 1911) 186 Fed. 375, 385.

3. Maitland, *Equity* (1936) 25; 4 Holdsworth, *History of English Law* (1937) 416. It is believed that the use was derived from the German *treuhand* or *salman*, and not from the *fidei-commissum* of the civil law. 1 Bogert, *Trust and Trustees* (1935) 9-10, sec. 2.

For a recent conveyance by a member of the clergy to avoid the rule against owning property see *Hegstad v. Wysiecki* (1917) 178 App. Div. 733, 165 N. Y. S. 898.

The authorities on the origin of uses and trusts are collected in Bogert, *Cases on Trusts* (1939) 1.

zation, he simply enfeoffed a layman to the use of the member. The same procedure would be employed when the conveyance was to the use of the society itself. No law or equity court would enforce the feoffee to use's promise that he would permit the cestui que use (an individual member of the society itself) to receive the rents and profits. He was only morally obligated to do so, and this moral obligation was enforced by threatening him with spiritual punishment. Later this same type of conveyance was utilized to evade the Mortmain Statutes which prohibited religious corporations or organizations from holding title to land.⁴ Although this practice was quickly stopped by subsequent Act of Parliament,⁵ the people had learned that feoffment to uses made the interest of the cestui que use devisable, freely alienable, and free from forfeiture and the incidents of feudal tenure.⁶ From about the beginning of the fifteenth century the Chancellor, an ecclesiastic, recognized the interest of the beneficiary, thereby converting the obligations of the feoffee to uses from a purely moral duty to an equitable one.⁷ Naturally the increased alienability; the power to create freehold estates to begin in the future; the devisability; the freedom from forfeiture, feudal burdens, and sale by the creditors of the cestui que use, made uses quite popular in England. Because the revenue of the Crown depended on forfeitures and feudal dues, and because creditors could not enforce their claims against the land of their debtors, the Statute of Uses⁸ was passed in 1535 to abolish the passive use by putting legal title in the cestui que use. It has been said:

The statute met with the most determined opposition from the bench and bar. Notwithstanding the many alleged frauds which could be committed by an abuse of the doctrine, public sentiment was opposed to its absolute destruction, and was in favor of preserving the power of creating an equitable estate in the nature of a use, and, notwithstanding

4. 2 Blackstone, *Commentaries*, *271-272.

5. (1391) 15 Rich. 11, c. 5.

6. 2 Blackstone, *Commentaries*, *329; 1 Bogert, *Trusts and Trustees* (1935) 11, sec. 2; 1 Scott, *Trusts* (1939) 12, sec. 1.3. For American conveyance to straw man to avoid possible forfeiture, see *Susong v. Williams* (1870) 48 Tenn. 625.

7. 1 Bogert, *Trusts and Trustees* (1935) 13, sec. 3; 1 Scott, *Trusts* (1939) 13, sec. 1.4.

8. (1535) 27 Henry VIII, c. 10. Repealed (1922) 12 & 13 Geo. V, c. 16, sec. 1 (7).

the remedial character of the statute, it received at the hands of the profession a strict and technical construction and was permitted to operate only so far as it was impossible to render nugatory its express provisions. Instead of destroying uses the statute only established them upon a firmer basis.⁹

The decisions of the equity courts after the Statute of Uses reveal the desire of the bar and of the judiciary to keep the interest of the beneficiary equitable and free from the burdens of legal principles. About the middle of the seventeenth century the courts of equity recognized the second use in a conveyance to the use of *B* to the use of *C*, "and by this means a statute made upon great consideration, introduced in a solemn and pompous manner, by this strict construction, has had no other effect than to add at most, three words to a conveyance."¹⁰

Many years have passed since the Statute of Uses was adopted to abolish the passive trust or use, but some of the same problems, in addition to others, remain unsolved. The cases on the various problems are so numerous that space would not permit citing decisions and statutes from all the states nor considering all the problems. Therefore, discussion will be restricted to certain problems and to selected cases, representing the different views.

The modern feoffee to uses or straw man may be a natural person, partnership, corporation, or other legal entity.¹¹ While he may be used to hold title to any type of property, consideration will be given only to certain problems arising from conveyances of land to a straw man. These land transactions may be divided into Passive Trusts for the Settlor's Benefit; Purchase Money Trusts; and, Straw Men as Conduits of Title.

PASSIVE TRUSTS FOR THE SETTLOR'S BENEFIT

Almost every state, if not all, recognizes the English Statute of Uses as part of its common law, has enacted a similar statute, or has adopted by decision the policy of recognizing the benefi-

9. 2 Blackstone, *Commentaries* (Lewis ed. 1902) 791, n. 150.

10. Lord Chancellor Hardwicke, *Hopkins v. Hopkins* (1738) 1 Atk. 581, 591, 26 Eng. Rep. 365, 372. The law courts had earlier refused to recognize the second use. *Tyrrel's Case* (1557) 2 Dyer 155a, 73 Eng. Rep. 336.

"The Statute of Uses does not execute a use or trust created upon a use or trust." Restatement, *Trusts* (1935) sec. 71. 1 Scott, *Trusts* (1939) 421, sec. 71.

11. Conveyances to fictitious persons will not be considered.

ciary of a passive trust to be the holder of the legal title.¹² In a passive trust the trustee has no active duties to perform. The beneficiary of such a trust manages the property though the trustee may sign leases, mortgages, and other papers, and may pay taxes, assessments, *et cetera* with money furnished by the beneficiary. The fact that the trustee is under a duty to convey as directed by the beneficiary would not make the trust an active one.¹³

Prior to the Statute of Uses it was presumed that a voluntary conveyance created a passive trust for the benefit of the feoffor or grantor. This presumption could be rebutted by the feoffee's proving that he had paid valuable consideration or that a use had been declared for the feoffee or another person. Because passive trusts are not supposed to be common today, a voluntary conveyance for no consideration would likely be presumed to be a gift.¹⁴ Only when there is a written or an oral agreement that the grantee will permit the grantor to manage the property and will convey on demand do we have the problems of a passive trust.

A. *Settlor v. Straw Man*

Whether the settlor can enforce a trust against his straw man to whom title was conveyed subject to the order of the settlor depends upon the character of the transaction. If the conveyance was for the purpose of defrauding creditors and it is necessary to bring a bill in equity to enforce an oral or written agreement by the straw man to reconvey, the equity courts are unanimous in refusing to grant relief because the plaintiff does not come into court with clean hands.¹⁵ This means of punishing fraudulent grantors will likely not deter others from relying on the moral integrity of a particular grantee in order to defraud

12. 1 Bogert, *Trusts and Trustees* (1935) 603, sec. 208.

13. 1 Bogert, *Trusts and Trustees* (1935) 588, sec. 206; 1 Scott, *Trusts* (1939) 415, sec. 69; Restatement, *Trusts* (1935) sec. 69.

14. 2 Bogert, *Trusts and Trustees* (1935) 1354, sec. 453; 3 Scott, *Trusts* (1939) 2169, sec. 405; Restatement, *Trusts* (1935) sec. 405.

15. *Jones v. Jefferson* (1933) 334 Mo. 606, 66 S. W. (2d) 555. Cases are collected in Note (1934) 89 A. L. R. 1166, 1168; 1 Bogert, *Trusts and Trustees* (1935) 617, n. 19. Cf. Note (1938) 117 A. L. R. 1464, on action against third party in whose name title was taken to defraud plaintiff's creditors.

But if grantee, being in a position to influence the grantor, induced the grantor to make the conveyance, equity will order a reconveyance. *Anderson v. Nelson* (1927) 83 Cal. App. 1, 256 Pac. 294; Restatement, *Trusts* (1935) sec. 422, comment d.

his creditors. When it is certain that creditors will take the debtor's land, the possibility that a grantee may refuse to reconvey on demand would hardly be a deterrent.¹⁶ Consequently, several states¹⁷ have made it a crime to knowingly receive title to property to aid the grantor to defraud his creditors. These statutes should give the grantee the needed "excuse" to refuse to accept title to land from his insolvent friend.

If the agreement to reconvey is in writing and if the grantee of a fraudulent conveyance has no active duties or manages the property *as the grantor's agent*, then the grantor would have the legal title under the Statute of Uses.¹⁸ However, the deed to the grantee would probably be recorded, making the grantor's title defeasible by a conveyance from the grantee to a bona fide purchaser for value, and therefore not marketable.

If at the time of the conveyance to the straw man the grantor had him reconvey title but recorded only the deed to the straw man, the legal title in the grantor would be concealed and his creditors might be defrauded. As soon as the grantor believed it safe to reveal his ownership, he could record the deed of reconveyance without any aid from the straw man. Thus the grantor could protect himself against the possibility that the straw man might later refuse to reconvey on demand where there was only a deed to the straw man and a secret oral or written agreement to reconvey. Therefore, the refusal of a court of equity to enforce an oral or written agreement to reconvey on demand land transferred to defraud the grantor's creditors really punishes the grantor for his ignorance and not for fraud, without aiding his defrauded creditors.

The Massachusetts court has adopted the seemingly inequi-

16. But cf. "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 conditions. 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." 1 Bogert *Trusts and Trustees* (1935) 618, sec. 211.

17. Ark. Dig. of Stats. (Pope's 1937) secs. 3077, 3079; Colo. Stats. (1935) c. 48, secs. 303, 305; Iowa Code (1935) sec. 13,051; Me. Rev. Stats. (1930) c. 138, sec. 4.

The possibility of an action against the straw man for conspiracy does not seem to be a deterrent because judgment will probably be for the defendant or he will be judgment proof. *Orrick v. Heberer* (Mo. App. 1939) 124 S. W. (2d) 664. Cases on actions for conspiracy against straw men are collected in Note (1919) 2 A. L. R. 287.

18. *Bing v. People* (1930) 254 N. Y. 484, 173 N. E. 687.

table position of granting relief to a fraudulent grantor if he can prove the necessary facts without showing fraud.¹⁹ Here again the court punishes for ignorance and not for fraud. Would it not be better for the court of equity to require that notice with request to intervene be sent to creditors of both grantor and grantee so that all interested parties would be brought before the court?²⁰ The property could then be sold at judicial sale, the defrauded creditors paid, and any balance given to the grantor if creditors of the grantee had not relied or obtained an interest superior to the grantor's under the particular recording act. The court would not be a party to any fraud, the creditors would be paid, and the repentant grantor rewarded. The fraudulent grantor would not be rewarded to induce repentance for its ethical benefits, but to aid defrauded creditors to secure payment of their just claims.

There are many conveyances to a straw man that are not fraudulent. The owner of land may desire to borrow money using land as security. Not desiring to become personally liable for the payment of any deficiency, he conveys to some one who is not financially responsible. This person then executes the necessary note or bond and the mortgage. This land may or may not be immediately reconveyed to the grantor. This means of avoiding personal liability has been held not to be fraudulent so long as the mortgagee is not induced to believe that the real owner is personally liable on the note.²¹

Although the real owner of land could execute a note and

19. *Gerace v. Gerace* (Mass. 1938) 16 N. E. (2d) 6, 117 A. L. R. 1458; *O'Gasapian v. Danielson* (1933) 284 Mass. 27, 187 N. E. 107, 89 A. L. R. 1159; cf. *Monahan v. Monahan* (1904) 77 Vt. 133, 59 Atl. 169, 70 L. R. A. 935.

20. Joinder of Parties.

"*Compulsory joinder*. All persons whose interests are so interrelated that they must be before the court in order that it may give adequate relief in the action, and who would be unduly prejudiced by a judgment rendered in their absence are indispensable, and must be joined. Persons who are not indispensable, but who ought to be parties if complete relief is to be accorded are conditionally necessary, and must be joined where the requirements of federal jurisdiction, jurisdiction over their persons, and venue permit.

"*Permissive joinder*. Plaintiffs or defendants may join or be joined when there is a question of law or fact common to their claims." 2 Moore's *Federal Practice* (1938) 2188, sec. 21.01.

21. *State ex rel. Mesker v. Reynolds* (Mo. 1922) 245 S. W. 1065, 25 A. L. R. 1484; *Underwood v. Patrick* (C. C. A. 8, 1899) 94 Fed. 468, cert. den. (1899) 175 U. S. 726.

mortgage in such form that he would not be personally liable, the note and mortgage would hardly be marketable because non-negotiable.²² Also, a purchaser of such a note would probably feel that he might lose if the land proved to be of less value than the note, whereas a note signed by a financially irresponsible person would create the mental feeling that if the land should prove insufficient the deficiency could be collected from the maker, since the holder of the note would not know of the maker's insolvency. Should this type of deception be sanctioned when we are trying to protect buyers of stocks, bonds, *et cetera*, against hidden defects?²³

Following a legitimate conveyance to a straw man, he may refuse to reconvey on demand. If the agreement to convey as directed was oral, then the court must either enforce the Statute of Frauds or create an exception to the statute. It is clear that relief need not be granted.

Most states require a trust of land to be in writing and to be properly signed.²⁴ In these states, by decision or statute, constructive and resulting trusts need not be in writing because they are created by law.²⁵ Therefore, the question which arises in an action to enforce an oral trust is whether the court should impose a resulting trust upon the grantee for the benefit of the grantor. The Uniform Trusts Act,²⁶ and a number of courts, state that a resulting trust for the settlor's benefit arises whenever an oral trust is not enforceable because of the Statute of

22. Negotiable Instruments Law sec. 1 (2), 3; cf. *Lorimer v. McGreevy* (1935) 299 Mo. App. 970, 84 S. W. (2d) 667; Comment (1936) 49 Harv. L. Rev. 478.

23. See MacChesney and O'Brien, Full Disclosure Under the Securities Act (1937) 4 Law & Contemp. Prob. 133.

24. Statutes are collected in 1 Bogert, *Trusts and Trustees* (1935) 251, n. 10.

25. 1 Bogert, *Trust and Trustees* (1935) 271, sec. 67.

26. "Sec. 16 (Unenforceable Oral Trust Created by Deed.)

"1. When an interest in real property is conveyed by deed to a person on a trust which is unenforceable on account of the Statute of Frauds * * * the intended trustee * * * shall be under a duty to convey the interest in real property to the settlor or his successor in interest. A court having jurisdiction may prescribe the conditions upon which the interest shall be conveyed to the settlor or his successor in interest.

"2. Where the intended trustee has transferred part or all of his interest and it has come into the hands of a bonafide purchaser, the intended trustee shall be liable to the settlor or his successor in interest for the value of the interest thus transferred at the time of its transfer, less such offsets as the court may deem equitable."

Frauds. The English decisions²⁷ and a few of the American state courts²⁸ have held that upon the grantee's refusing to reconvey on demand a resulting trust for the benefit of the grantor arises. This trust is based on the fact that the original conveyance resulted from the oral promise to hold to the use of the grantor. Other American courts have enforced the oral trust whenever the grantee has permitted the grantor to enter into or to remain in possession and to make valuable improvements, on the theory that part performance takes the oral trust out of the Statute of Frauds.²⁹ There is decided conflict in the cases as to whether entering into or remaining in possession is in itself sufficient.³⁰

27. *Davies v. Otty* (1865) 35 Beav. 208, 55 Eng. Rep. 875; *In re Duke of Marlborough* [1894] 2 Ch. 133.

28. "It is a familiar principle in equity that a trust is implied whenever the circumstances are such that the person taking the legal estate, whether by fraud or otherwise, cannot enjoy the beneficial interest without violating the rules of honesty and fair dealing. It is true that some hold that a fraud must exist at the time the title is acquired—an element lacking here, as we have seen; some say that this fraudulent intent will be inferred from a subsequent failure to perform the agreement under which the title is obtained; while still others take the ground that fraud at the outset is established by proof of subsequent fraud. It is enough here to say that the best considered modern cases go to the extent of holding that when one conveys the title to his property to another in reliance upon the latter's promise, a conscientious obligation is imposed, a violation of which for the grantee's own advantage is such a fraud that equity will make him a constructive trustee for the benefit of the grantor or his beneficiary. And this will be so, though the grantee enters into the agreement with an honest intention of performing it." *Miller v. Belville* (1924) 98 Vt. 243, 126 Atl. 590, 592. Other cases which seem to support the English rule are collected in 1 *Scott, Trusts* (1939) 249, n. 5; 3 *Bogert, Trusts and Trustees* (1935) 1588, n. 22. Most of these cases can be distinguished as being purchase-money trusts, actual fraud at date of conveyance, confidential relationship, or purchase at judicial sale under oral trust to convey to original owner.

In Massachusetts the grantor can recover in an action at law the value of the property though he can not compel a reconveyance by a bill in equity. *Cromwell v. Norton* (1906) 193 Mass. 291, 79 N. E. 433.

The following writers have advocated the enforcement by courts of equity of oral promises to reconvey. Ames, *Constructive Trusts Based upon the Breach of an Express Oral Trust of Land* (1907) 20 Harv. L. Rev. 549, 555; Costigan, *Trusts Based on Oral Promises to Hold In Trust, To Convey, or To Devise, Made by Voluntary Grantees* (1914) 12 Mich. L. Rev. 515; Stone, *Resulting Trusts and The Statute of Frauds* (1906) 6 Col. L. Rev. 326.

29. *Goff v. Goff* (1916) 98 Kan. 201, 158 Pac. 26; *Thierry v. Thierry* (1923) 298 Mo. 25, 249 S. W. 946. Cases are collected in 1 *Scott, Trusts* (1939) 277, n. 2.

30. *Gallagher v. Northrup* (1905) 215 Ill. 563, 74 N. E. 711 (possession by grantor removed oral trust from Statute of Frauds). Contra: *Bolin v. Krengel* (1924) 116 Kan. 459, 227 Pac. 266.

The Connecticut court has held that delivery of the deed to the voluntary grantee constitutes part performance so as to make an oral trust to reconvey enforceable against the grantee. *Crocker v. Higgins* (1829) 7 Conn.

Of course, if there is a fiduciary relationship between grantor and grantee and the conveyance was due to this relationship, or to fraud, duress, or mistake, all courts would impose a constructive trust for the grantor's benefit.³¹

Those courts which have refused to enforce the grantee's oral agreement to reconvey look only to the immediate parties to the action and to the language of the statute. There are few legal problems that can be solved by ignoring the interests of third parties and without a full consideration of the history of the particular problem. Therefore, if the courts would consider the question of the enforceability of an oral agreement to reconvey in relation to other problems, they might be induced to overrule their prior decisions.

Prior to the Statute of Uses a voluntary conveyance without any declaration of a use created a resulting use for the grantor. So far as is known there are no cases where such a grantee has been defrauded by the grantor. Therefore, the Statute of Frauds was probably passed to prevent fraud by persons other than the original owners who claimed title under oral agreements. Realizing this fact, the English courts excepted from the Statute of Frauds the oral agreement to reconvey by calling it a resulting trust. Due to the fact that the first Statute of Frauds was passed by Parliament, the decisions of the English courts likely represent a more complete understanding of the purpose of this statute than the American decisions construing state statutes copied from the English Statute of Frauds.

In addition to preventing unjust enrichment, the recognition

342; *Hayden v. Denslow* (1858) 27 Conn. 335. Contra: *Feeney v. Howard* (1889) 79 Cal. 525, 21 Pac. 984.

31. Cases are collected in 3 Bogert, *Trusts and Trustees* (1935) 1594, sec. 496; 1 Scott, *Trusts* (1939) 237, 238, secs. 44.1, 44.2.

Section 44 of the Restatement of *Trusts* (1935) and section 182 of the Restatement of *Restitution* (1936) provide that the grantee of a voluntary conveyance who orally agreed to reconvey to the grantor holds the land as constructive trustee in the following cases: first, if the transfer was procured by fraud, duress, undue influence, or mistake; second, if there was a confidential relationship between the grantor and the grantee; third, if the transfer was made as security for an indebtedness of the transferor.

The Caveat to section 182 of the Restatement of *Restitution* states:

"The Institute takes no position on the question whether the transferee holds upon a constructive trust for the transferor an interest in land transferred to him *inter vivos*, where he orally agreed with the transferor to hold it in trust for the transferor or to reconvey it to the transferor, except under the circumstances stated in this Section."

A similar Caveat follows section 44 of the Restatement of *Trusts*.

of an equitable interest in the grantor would aid the courts to prevent fraudulent conveyances.³² Because fraud depends upon factors not necessarily presented to the court in an action by the grantor to compel a reconveyance and because this is a type of transaction which is commonly used to defraud creditors, the judges should be astute enough to devise means of discovering this type of illegal transfer. No one is better informed as to the nature of the transfer than the grantor. Therefore, he should be encouraged to bring before a court of equity all the facts pertaining to such a transfer. Obviously, he will not be encouraged to present the facts to the court if he will never be granted any relief. Therefore, the courts of equity should award to the grantor the land or the balance of the proceeds remaining after satisfying the claims of all the grantor's creditors and of the grantee's creditors entitled to protection because of their reliance or because of the particular recording act. This can be done only by notifying the creditors of both the grantor and the grantee and by requesting them to intervene to protect their interest.³³ If all creditors of the grantor and grantee consent to the reconveyance, then it should be ordered. The grantee can always protect himself by proving the payment of valuable consideration. This type of procedure should be followed in all actions to enforce a written or oral promise to reconvey land. The extra time required by the court would likely prevent subsequent expensive actions by the grantor's or grantee's creditors to reach the property.

If a court of equity refuses to enforce an oral agreement to reconvey, does the grantor have any interest which his creditors can reach if the original conveyance was not fraudulent? The reputed wealth of an individual may be, and likely is, based upon the amount of real or personal property that he "owns", whether

32. "Perhaps it is too late in the day to expect, says Bower, however desirable it may be, that the appellate tribunals of the land may in some case yet to be decided immortalize themselves by boldly discarding the word fraud, and proclaiming its futility. Its meaning includes so many different hues and forms that the courts must confine themselves to comparatively few general rules for its discovery and defeat. It is generally understood that the facts and circumstances peculiar to each case, in connection with their legal remedies, are permitted to bear heavily on the judgment of the court or jury in determining whether this ambiguous thing, called fraud, is present or absent." McCleary, *Damage as Requisite to Rescission for Misrepresentation* (1937) 36 Mich. L. Rev. 1, 2.

33. See note 20, supra.

it is held in his own or another's name. Therefore, when credit is extended on the basis of reputed wealth, there is indirect reliance upon the land secretly held by others for the debtor. Shouldn't this reliance be protected by recognizing the real owner as the beneficial owner? While the grantor in certain states need not plead that the agreement was in writing and will be allowed to recover if the grantee fails to plead the Statute of Frauds,³⁴ can creditors of the grantor recover without pleading and proving a written agreement if the original conveyance was not fraudulent?

An additional factor that should not be ignored by the courts when considering the enforcement of an oral trust is the danger of self-help. A frustrated grantor who feels that he has been betrayed, robbed and tricked by his straw man may take the law into his own hands to try to secure the relief which equity denies him.

B. Settlor's Creditors v. Straw Man

If the conveyance to the grantee was for the purpose of defrauding his creditors, it is clear that the grantee holds title as trustee for the creditors of the grantor whether the agreement to hold for the use of the grantor was written or oral. The chief problem is proving that the transfer was fraudulent.

When the transfer of legal title to the straw man was not fraudulent,³⁵ then the existing creditors can not have it set aside. Later the solvent grantor may become insolvent unless land held by the straw man can be reached by the grantor's creditors. If the passive trust was in writing signed by the grantee, then the Statute of Uses would execute the trust to give the grantor legal title. It is only when the trust is not in writing that the problem of reaching the land arises. Obviously, if the court imposes a resulting or a constructive trust for one

34. "That it was not created by written evidence is a matter of defense or to be raised by objection to the evidence offered to prove the trust." *Mugan v. Wheeler* (1912) 241 Mo. 376, 382, 145 S. W. 462, 463.

"While under the older system of equity pleading it was required that a complainant relying on a transaction which was governed by the Statute of Frauds should show in his bill that there was a writing or that the statute was otherwise satisfied, the modern authorities are strongly opposed to this position." 1 Bogert, *Trusts and Trustees* (1935) 279, sec. 71.

35. An absolute conveyance of attachable property under a secret trust for the grantor is considered fraudulent per se in a number of states. *Bellini v. Neas* (1929) 50 R. I. 283, 146 Atl. 634, 68 A. L. R. 303. Cases are collected in Note (1930) 68 A. L. R. 306.

of the reasons previously enumerated, the creditors could reach the legal interest through the debtor's equitable interest.³⁶ But when the court has previously held that the debtor had no equitable interest, is it going to deny relief to his creditors? If the straw man is an honest person, he will stand ready to convey on demand. Thus, to refuse to aid the debtor's creditors to reach this land is to make the Statute of Frauds a means of defrauding. The previously suggested solution of recognizing the true owner as the beneficial or equitable owner would solve this problem.

In Illinois there has developed a very unusual type of land trust. The trust is created by conveying land to a trustee to hold under conditions set forth in a separate unrecorded instrument. This trust instrument provides that the interest of the beneficiary shall be considered as personal property; that the beneficiary shall have the absolute management of the property; that the trustee will convey, mortgage, or deal with the property in any other way at the written request of the beneficiary; that at the end of twenty years the trustee will sell the land and distribute the proceeds to the holder of the trust certificate. In the recent case of *Chicago Title and Trust Co. v. Mercantile Trust and Savings Bank*,³⁷ a judgment was secured against the beneficiary of a land trust. After this judgment had been entered the beneficiary authorized the trustee to execute a mortgage on the land. In the contest between the judgment creditor and the mortgagee, the court held that the judgment was not a lien on the land because the beneficiary's interest was personalty and not realty. The reasons given by the court for its decision are not entirely satisfactory from a purely legal point of view. The Statute of Uses was not applied because it was expressly stipulated in the trust certificate that the interest of the beneficiary was personalty and the Statute of Uses executes only trusts of realty; and because the trustee had active duties to perform, viz., to convey upon the written order of the beneficiary and to sell

36. Although the general rule is that constructive and resulting trusts, which are necessarily passive, are not executed by the Statute of Uses, in *Lahey v. Broderick* (1903) 72 N. H. 180, 55 Atl. 354, the beneficiary of a purchase-money trust was recognized as the legal owner.

For brief discussion of various ways of subjecting the beneficiary's interest to payment of his debts, see 1 Bogert, *Trusts and Trustees* (1935) 539, sec. 193.

37. (1939) 300 Ill. App. 329, 20 N. E. (2d) 992.

the land at the end of a twenty year period, distributing the proceeds.

Since the trustee held title to land in trust for the certificate holder, how can it be said that this was not a trust of realty? The mere fact that the trustee was obligated to convey when ordered to do so would not mean that he had any obligations in addition to those of a trustee of a passive trust.³⁸ The additional obligation to sell the property at the end of a twenty year period should not induce a court to refuse to apply the Statute of Uses unless there is some policy favoring equitable interests.

The Illinois land trust, though somewhat of an anomaly, is not in itself fraudulent. After a conveyance to a trustee the beneficiary retains personalty equal in value to the land evidenced by a certificate. This certificate is similar to a stock or bond certificate and is about as alienable. It evidently represents a new type of conveyancing developed by business men to meet modern business needs.

In those states which have a statute similar to Kentucky's,³⁹ a judgment is a lien on the legal and equitable interests of the judgment debtor and the result obtained by the Illinois court could not have been attained. There are certainly some who favor either making the equitable interest subject to the judgment lien or placing legal title in the holder of the certificate by means of the Statute of Uses. This would be the legal solution and the one adopted in 1535. However, it is far from certain that this would be the best way to solve the problem. Owners of land desire the same secrecy, the same alienability, and the same freedom from judgment liens that owners of intangible property now enjoy. Is there any reason why land owners should not be given these rights? Is there something peculiar to the ownership of land which requires that every one should know the name of the owner, that it must be alienable only according to methods used when land was not the subject of commercial transactions, and that it must be subject to judgment liens? In Illinois, large corporations⁴⁰ are engaged in the business of holding title to land to give to owners of land the same rights that holders

38. 1 Scott, *Trusts* (1939) 19, sec. 1.6.

39. Ky. Carroll's Stats. Ann. (1936) sec. 2355.

40. See *Some Uses and Purposes of Land Trusts* by Chicago Title & Trust Company (1939). These corporate straw men solicit business by advertising. See advertisement in (Sept. 1939) 25 A. B. A. J. ii.

of stock certificates now enjoy. Only if the results obtained are undesirable should they be abolished before a better system is provided.

If it is desirable that owners of land should have the same rights as owners of intangibles, then surely some system should be devised to give to all land owners these rights. Why could not the Torrens System of Land Registration⁴¹ and the Illinois Land Trust be combined so as to give the owners of land, their creditors, and subsequent purchasers the fullest possible protection against fraud? Title could be registered in the name of some public official who would issue a certificate of ownership to the real owner. The record would state that title was held by this public official in trust for certificate holder No. 11119.⁴² Judgment creditors of the certificate holder could discover what property was "owned" by him by simply filing a petition with the public official setting forth their claims against the named debtor and requesting information as to the property owned by said debtor. Of course the petition would have to be supported by an affidavit that the facts were true and correct. Such a system should not be expensive, would make the land more alienable, and ownership secret. However, it would not wholly eliminate passive trusts because there would always be some who would place their certificates in trust to defraud creditors or to try to evade taxes.

C. Settlor v. Purchasers from Straw Man

When the owner of land, who is not in possession, conveys by absolute deed to a straw man who orally agrees to reconvey on demand but does not record his deed, there may arise the question whether a bona fide purchaser for valuable consideration from the straw man receives title as against the real owner. In those states where the straw man is trustee under a constructive trust for the benefit of the true owner, the equitable interest of the real owner would be extinguished by a transfer of the legal title to a bona fide purchaser for value. If the grantor has no

41. See Uniform Land Registration Act (1932) 9 Unif. Laws Ann. 217 et seq.; McDougal and Brabner-Smith, *Land Title Transfer: A Regression* (1939) 48 Yale L. J. 1125. But cf. Powell, *Registration of the Title to Land in the State of New York* (1938).

42. Such a system would be somewhat similar to our method of issuing federal currency.

equitable interest then clearly the purchaser with or without notice would prevail.

The more difficult problem arises when there is a written agreement to reconvey, and neither the deed to the straw man nor the written agreement is recorded. In such a case the grantor would receive legal title under the Statute of Uses and the straw man would have no interest in the land. Only if the purchaser can bring himself within the protection of the recording acts would he be entitled to the land. The written agreement would be similar to an unrecorded deed from the grantee to the grantor.⁴³ Consequently, all persons protected under a particular recording act would prevail as against this unrecorded written instrument or deed. The fact that the record may indicate that the grantor had title would not be material because his subsequent deed, though unrecorded, would transfer this title to the grantee as to those protected by the recording act.

If the real owner is not in possession and the deed to the straw man is recorded, then clearly all persons protected by the recording act would take free of any unrecorded written agreement or unrecorded deed of reconveyance.⁴⁴

The most difficult case arises when the grantor remains in possession and has either an equitable interest or legal title under an unrecorded deed. It is immaterial whether the deed to the straw man is recorded since bona fide purchasers for value would be entitled to protection in either case provided the grantor's possession was not constructive notice of his equitable or legal interest. In those states where the possession of one claiming an interest in the land is not constructive notice of his claim to those persons protected under the recording act, such persons would have rights superior to the grantor's.⁴⁵ If possession does constitute constructive notice, is the possession by the grantor such notice? On this point the courts are divided. Some state that the grantor's possession is never notice of his claim;⁴⁶ others that it is always notice;⁴⁷ others that it is notice only after a

43. *Bing v. People* (1930) 254 N. Y. 484, 173 N. E. 687, 688.

44. *Whitt v. Kentucky Oil Producing Co.* (1928) 223 Ky. 348, 3 S. W. (2d) 786.

45. *Pomroy v. Stevens* (1846) 11 Met. (Mass.) 244.

46. *Clark v. Chapman* (1931) 213 Iowa 737, 239 N. W. 797. Cases are collected in Note (1936) 105 A. L. R. 845, 849.

47. *Gallagher v. Northrup* (1905) 215 Ill. 563, 74 N. E. 711. Cases are collected in Note (1936) 105 A. L. R. 845, 846.

reasonable time has elapsed.⁴⁸ In any case, if it can be shown that upon inquiry being made the grantor would have denied having any interest in the land, then the purchaser would prevail. The grantor's ability to testify in an action brought by the grantee's purchaser that he would have disclosed his interest if asked (though in fact he probably would not have done so) gives him an unfair advantage and tends to promote perjury. Therefore, the bona fide purchaser for value from the straw man should be protected in all cases when the real owner or his tenant remains or enters into possession *after a voluntary conveyance to a straw man under an oral trust to convey as directed*.⁴⁹

If the straw man is in possession as tenant of the real owner, then all bona fide purchasers for value from him should be protected. Also, if the "true owner" by word or act represents that the straw man is the owner then he will be estopped from asserting title as against bona fide purchasers for value.⁵⁰ General reputation or rumor that land recorded in the name of a straw man is owned by another is generally considered not to be such notice as to deprive an otherwise bona fide purchaser for value of the protection of the recording act.⁵¹

D. Settlor v. Creditors of Straw Man

Whenever the owner of land conveys bare legal title to a straw man under an oral trust to convey as directed, it is probable that the straw man's creditors will seek to have the land sold to pay their claims. For purposes of analysis it will be assumed that the true owner is not in possession, that he has an equitable interest in the land, that the deed to the straw man has been recorded, that the conveyance was not to defraud creditors, and that the straw man has three classes of creditors. The creditors of the straw man or grantee are, first, those who extended credit prior to the deed to the straw man, second, those

48. *Bennett v. Robinson* (1873) 27 Mich. 26. Cases are collected in Note (1936) 105 A. L. R. 892, 895.

49. When the grantor remains or enters into possession after a conveyance of title to secure a loan, he will declare to all who inquire that he is the owner. Therefore, decisions protecting a mortgagor in possession should not be used as authority to sustain a grantor's equitable or moral rights under an oral trust to reconvey which was made to conceal his identity.

50. 2 Tiffany, *Real Property* (2d ed. 1920) 2134, sec. 546.

51. Note (1937) 109 A. L. R. 746.

who extended credit subsequent to such deed but without relying on title in him, and third, those who did rely on title in the straw man at the time of granting credit.

Since some recording acts protect only judgment creditors and others protect neither judgment nor general creditors,⁵² another reason must be found if the straw man's creditors are to be granted rights which are superior to the equitable interest of the true owner. General and judgment creditors of the straw man who never relied on his title will not be protected.⁵³ The doctrine of estoppel is applied in some states to subordinate the equitable interest to the right of all those who relied on title in the straw man;⁵⁴ other states protect those relying only if the straw man, *with the express or implied consent of the real owner*, represented that he owned the land.⁵⁵

If the grantor has only a moral right to the land, either because the transfer was fraudulent or because the agreement to reconvey was oral, then all creditors of the straw man would have rights superior to those of the original grantor so long as the straw man retained title. Even those who extended credit prior to the conveyance could reduce their claims to judgment and have the land sold. Seldom would this happen, however, because the grantee would reconvey to the "true owner" before a lien could be secured. This reconveyance would raise the question whether it was fraudulent and voidable if the straw man was insolvent.

Whether a reconveyance by a straw man to the original grantor is fraudulent as to the straw man's creditors depends upon the attitude of the court toward moral consideration. If a transfer to prefer one credit over another is fraudulent, then a transfer to discharge a moral debt would likewise be fraudulent. If such a transfer is not voidable for fraud, the court must then determine whether a moral debt is equivalent to a legal debt. At least one court considers a moral obligation to be the same as

52. See Note (1913) 13 Col. L. Rev. 539.

53. *Kingsbury v. Christy* (1920) 21 Ariz. 559, 192 Pac. 1114; *Citizens' Bank v. Burrus* (1903) 178 Mo. 716, 77 S. W. 748; 2 Scott, *Trusts* (1939) 1691, 1704, secs. 308.1, 313; Note (1911) 30 L. R. A. (N. S.) 11.

54. *Osborn v. Peace* (D. C. E. D. N. Y. 1914) 215 Fed. 181; *Goldberg v. Parker* (1913) 87 Conn. 99, 87 Atl. 555, 46 L. R. A. (N. S.) 1097.

55. *Stone v. Stitt* (1910) 62 Tex. Civ. App. 492, 132 S. W. 862; Restatement, *Trusts* (1935) sec. 313. For other cases see 2 Scott, *Trusts* (1939) 1707, n. 10.

a legal debt and the reconveyance not fraudulent.⁵⁶ Those courts which sustain a reconveyance to a fraudulent grantor, whether or not the straw man's creditors relied, on the ground that the rights of the fraudulent grantor's creditors are superior to the rights of the straw man's creditors aid the fraudulent grantor because his creditors will likely never benefit.⁵⁷ However, there is a tendency to protect creditors of the straw man who have relied on his ownership as against the grantor.⁵⁸ The attitude of a number of courts, which say they represent the majority, may be illustrated by considering somewhat at length a case⁵⁹ involving an actual fraudulent conveyance to a straw man, followed by a reconveyance.

One *O* owned a certain farm. To defraud his creditors, *O* conveyed title to his son, *A*, who orally agreed to reconvey on demand. *A* was sued for breach of promise and judgment entered against him, but before the judgment became a lien on the land *A* reconveyed to his father, *O*, who promptly conveyed to another son, *B*. The court described the interest of son *A* prior to his reconveyance as follows:

The son held the full legal title, and he held the equitable title, as against all the world except the creditors of the father. They, so far as we know, never at any time sought to disturb the title of the son. The land in the hands of the son was subject to his debts. Had a creditor of his obtained judgment against him while the title stood in his name, the judgment would have been a lien upon the land, and no transfer to the father could have affected the lien. * * * In other words, in a contest between the creditors of the grantor and the creditors of the grantee, the former will succeed. * * * This shows that the property rights of the vendor have not been extinguished. But the law, for reasons of public policy and to discourage fraudulent conveyances, will not permit him to assert them. If, then, these property rights exist; if the grantor purchased and paid for the property, and has never received anything therefor from the grantee; if the only right or equity that the grantee has in the property in his right to claim the protection of a technical rule of law that will not permit him to be

56. *Biocchi v. Casey-Swasey Co.* (1897) 91 Tex. 259, 42 S. W. 963.

57. *Biocchi v. Casey-Swasey Co.* (1897) 91 Tex. 259, 42 S. W. 963. But cf. *McHugh v. Lasco* (1938) 255 App. Div. 1025, 8 N. Y. S. (2d) 605.

58. *Susong v. Williams* (1870) 48 Tenn. 625; see *Lockren v. Rustan* (1899) 9 N. D. 43, 81 N. W. 60, 62.

59. *Lockren v. Rustan* (1899) 9 N. D. 43, 81 N. W. 60.

attacked, not by reason of any rights in him, but solely on the ground of public policy,—it must follow that, in good conscience and morals, the grantee ought to reconvey to the grantor, if the latter so request.⁶⁰

The North Dakota court gave as its reason for refusing to set aside the reconveyance to *O* that *A* was under a moral duty to *O* to reconvey, that *A*'s creditor did not rely on title in *A*, that *A*'s creditor had no lien, that *O* did not request the reconveyance to prevent *A*'s creditor from collecting her judgment but to protect the land from the judgment. An additional reason not expressly stated in the opinion but which seems to have been present in the minds of the judges was their feeling that a judgment for breach of promise was not a desirable type of claim. Since suits are not usually instituted against judgment-proof defendants, can it be said that the action for breach of promise was not brought against *A* because he had title to the land?⁶¹ Should this type of reliance be protected where its extent would be the cost of maintaining the suit and not the amount of judgment secured? The distinction made by the court between an intent to defraud *A*'s creditors and an intent to protect *O*'s property is practically impossible of determination and probably does not exist.

Although the moral obligation is primarily to the grantor's creditors instead of the fraudulent grantor, the courts make no provision for protecting these creditors when sustaining a reconveyance.⁶² Nor are creditors of the grantor protected by courts which set aside the reconveyance because they find no moral duty to reconvey.⁶³

Judge Learned Hand gives as the sole reason for upholding a reconveyance on the ground of moral obligation the principle of *stare decisis*. In *Bryant v. Klatt*,⁶⁴ he said:

60. *Lockren v. Rustan* (1899) 9 N. D. 43, 81 N. W. 60, 61.

61. Cf. "The cause of action having been a tort, the ground of estoppel, which is sometimes found in cases in which the claim is upon contract, and credit has been given on the belief that the debtor was the true owner of property of which he had the legal title only, but not the equitable title, is not found here." *Lillis v. Gallagher* (1884) 39 N. J. Eq. 93, 95.

62. *Berg and Co. v. Frantz* (1902) 113 Ky. 888, 69 S. W. 801; *Bicocchi v. Casey-Swasey Co.* (1897) 91 Tex. 259, 42 S. W. 963.

63. *Keel v. Larkin* (1887) 83 Ala. 142, 3 So. 296; *Chapin v. Pease* (1834) 10 Conn. 69; *Walton v. Tusten* (1873) 49 Miss. 569.

64. (D. C. S. D. N. Y. 1924) 2 F. (2d) 167, 168. Cf. *Moran v. Morgan* (C. C. A. 2, 1918) 252 Fed. 719.

The conveyance on the eve of bankruptcy was, they claim, as much of a fraud on them as though the land had been bought with their money. Perhaps this ought to be the law, but in fact it is not. While as against the grantee the cestui que trust has no rights which he can enforce, still if the grantee chooses to recognize his "moral" obligations, as it is called, his creditors may not complain. The courts seem to have been able to endure the spectacle of a man who in his own interest defrauds a confiding fellow, but to stick at allowing the same privilege to his creditors. Whatever may be thought of the logic of the distinction, it is well settled.⁶⁵

Can it be said that the certainty of bad law is better than the chance of a good decision?

In *Lockren v. Rustan*, the court was reminded that after *A* reconveyed to his father, *O*, *O* conveyed the bare legal title to *B*, another son, to defraud *O*'s creditors. The court said of this transfer:

It is clear to us that in deeding the property to another son he acted *ex abundanti cautela*, and in the mistaken belief that he was thus placing another barrier between his property and the danger that menaced it.⁶⁶

Yet it had previously stated in speaking of the conveyance to the son, *A*, to defraud *O*'s creditors that the creditors, "so far as we know, never at any time sought to disturb the title of the son."⁶⁷ Here we have stated the attitude of many courts toward these fraudulent transfers. It is assumed that no one can defraud his creditors by a conveyance to a straw man or dummy. This assumption ignores the fact that most of the evidence to prove fraud must come from the grantor's friends; that fraud must be proved by clear and concise evidence; that an action to set aside a fraudulent conveyance will frequently cost more than the amount owed to individual creditors without any assurance of success; that often creditors are not organized; and that the decisions of the court frequently aid those who have others hold legal title to land so that their prior or subsequent creditors can

65. Is this what Professor Warren has described as "an unreasoning adherence to an unreasonable rule?" Warren, *Cases on Property* (2d ed. 1938).

66. (1899) 9 N. D. 43, 81 N. W. 60, 64.

67. (1899) 9 N. D. 43, 81 N. W. 60, 61. In *Creekmur v. Creekmur* (1881) 75 Va. 430, the fraudulent grantor remained in possession forty-seven years and secured title by adverse possession!

not reach it. There are no policemen to discover fraudulent conveyances and concealed titles. In an Iowa case,⁶⁸ a father conveyed to his son certain land for a recited consideration of \$2500. Later when the creditors of the son became active the son reconveyed. It was proved that the son had not paid any of the recited consideration and that the reconveyance was to discharge the debt owed to the father. Therefore, the court found nothing fraudulent in the transaction since preferring one creditor over another was not fraudulent. The courts should realize that the testimony of the true owner depends upon whether his or the straw man's creditors are trying to reach the property. If the original grantor's creditors should be protected in actions to set aside a reconveyance, then the straw man's creditors ought to prove that all of the real owner's creditors who were defrauded have been notified and requested to intervene to protect their interests. After these creditors of the real owner have been brought into the case, the property fraudulently conveyed should be distributed as follows: first, to creditors, if any, of the straw men who are protected under the recording acts; second, to creditors of the real owner who were defrauded, if not guilty of laches; third, to judgment creditors of the straw man who have liens on the property; fourth, to those creditors of the straw man who relied; and fifth, to the real owner.⁶⁹

When the dispute is between the creditors of the real owner and those of the straw man, it has been held that the creditors of the real owner have the superior rights.⁷⁰ In these cases the creditors of the real owner were not dilatory. Yet, in the decisions there are frequent dicta⁷¹ that seem to assume that credi-

68. *First Nat'l Bank of McGregor v. Hostetter* (1883) 61 Iowa 395, 16 N. W. 289.

69. If the original conveyance was not fraudulent and the grantor has an equitable interest the order of distribution should be as follows: First, to creditors of grantor and grantee protected under the recording act in the order of their priority; second, to judgment creditors of the grantee who relied; third, to general creditors of grantee who relied; fourth, to creditors of grantor; fifth, to grantor.

Ordinarily a judgment is only a lien on the interest of the debtor and is not prior to the rights of a beneficiary of an express, constructive, or resulting trust. 1 Bogert, *Trusts and Trustees* (1935) 434, sec. 146; 2 Scott, *Trusts* (1939) 1691, sec. 308.1; Restatement, *Trusts* (1935) sec. 308.

70. *Mullanphy Savings Bank v. Lyle* (1881) 75 Tenn. 431 (no recording act involved); see *Clark's Adm'r v. Rucker* (1847) 46 Ky. 583, 584 (fraudulent conveyance of slaves).

71. "In a contest between the creditors of the grantor and the creditors

tors of a fraudulent grantor will always prevail over the straw man's creditors. If the real owner's creditors have not set aside the fraudulent conveyance for the period which constitutes laches, then all creditors of the straw man who have relied should be protected. It might be better to require the creditors of the fraudulent grantor to have the conveyance set aside within a period much shorter than the period that constitutes laches to protect the straw man's creditors.⁷²

PURCHASE-MONEY TRUSTS

One of the most numerous resulting trusts is the purchase-money trust.⁷³ It arises from the paying of the purchase price and taking title in the name of a third person who is not related by blood or marriage so as to raise a presumption of a gift.⁷⁴ This type of resulting trust may be used because the real purchaser desires to conceal his identity to purchase the land, or to defraud his creditors,⁷⁵ or to limit his liability by having a note and mortgage executed by the third person, or for numerous other possible reasons.

It was early decided in New York that the courts had made a mistake when they recognized purchase-money trusts. This type of resulting trust was evidently used frequently to defraud existing and future creditors. Therefore a statute was enacted abolishing the purchase-money trust and making the third person or straw man a trustee for the creditors of the real purchaser.⁷⁶ If there are no creditors, the third person retains both

of the grantee, the former will succeed." *Lockren v. Rustan* (1899) 9 N. D. 43, 81 N. W. 60, 62.

72. The cases considering the statute of limitations or laches as applied to actions to set aside a fraudulent conveyance are collected in Note (1932) 76 A. L. R. 864.

73. Professor Bogert states that he has examined over 2400 American cases dealing with the purchase-money trust. 2 Bogert, *Trusts and Trustees* (1935) sec. 454, n. 32.

74. See Scott, *Resulting Trusts Arising Upon The Purchase of Land* (1927) 40 Harv. L. Rev. 669; Restatement, *Trusts* (1935) secs. 440-460.

75. The problems arising when title is taken in the name of a third person to defraud the real purchaser's creditors are the same as those discussed in connection with fraudulent conveyances. The cases are collected in Note (1938) 117 A. L. R. 1464.

76. "A grant of real property for a valuable consideration, to one person, the consideration being paid by another, is presumed fraudulent as against the creditors, at that time, of the person paying the consideration, and, unless a fraudulent intent is disproved, a trust results in favor of such creditors, to an extent necessary to satisfy their just demands; but the title vests in the grantee, and no use or trust results from the payment to the

legal and equitable title. This is no hardship on the real owner if the third person is a dummy corporation organized and controlled by him for the purpose of holding title to land. Those persons who cannot afford a dummy corporation can still take title in the name of a third person and rely on his moral duty to convey as directed. In either case there is always the danger that the straw man's creditors may have the land sold to satisfy their claims, since a conveyance to the real owner would be set aside in New York as fraudulent, provided the straw man would be left insolvent.⁷⁷ However, the New York courts have construed the statute to give an equitable interest to the one paying the price if there has been part performance, conversion of the realty into personalty by a sale, a written trust, or a confidential relationship between the one paying the price and the grantee.⁷⁸

Some New York banks, real estate dealers, and others, have dummy corporations take title to land purchased by them.⁷⁹ In addition to enabling the real purchaser to use the land in ways that would not have been permissible if title had been taken in his or its own name, there is no liability under deficiency judgments rendered against the dummy corporation on notes signed by it. If title is taken in the name of such dummy corporation and the note and mortgage duly signed by it, and title is then transferred to the bank or real purchaser, a deficiency judgment could not reach any of its assets. But should the bank neglect to have title transferred to itself then a deficiency judgment against the dummy corporation would reach other land held for the bank, and this could not be prevented by a conveyance of title to the bank prior to the entering of the judgment.⁸⁰ Thus

person paying the consideration, or in his favor, unless the grantee either,

1. Takes the same as an absolute conveyance, in his own name, without the consent or knowledge of the person paying the consideration; or,

2. In violation of some trust, purchases the property so conveyed with money or property belonging to another." N. Y. Cahill's Consol. Laws (1930) c. 51, sec. 94.

Other states which have statutes similar to New York's are: Ky. Carroll's Stats. Ann. (1936) sec. 2353; Mich. Comp. Laws (1929) sec. 12, 973-12,975; Minn. Mason's Stats. (1927) secs. 8086-8088; Wis. Stats. (1937) secs. 231.07-231.09. In Kentucky the one paying the purchase price may recover this amount from the grantee. *Martin v. Martin* (1868) 68 Ky. 47.

77. *Fraw Realty Co. v. Natanson* (1933) 261 N. Y. 396, 185 N. E. 679.

78. See Powell, *Cases on Possessory Estates* (1933) 520-522.

79. See *Northern Bank of N. Y. v. Washington Sav. Bank* (1916) 172 App. Div. 341, 158 N. Y. S. 497.

80. *Fraw Realty Co. v. Natanson* (1933) 261 N. Y. 396, 185 N. E. 679.

the effect would be almost the same as if the bank had signed the note except that the liability would be restricted to the land held in the name of the dummy corporation. If the dummy corporation which executes notes and mortgages immediately transfers title to the bank after the note and mortgage have been sold, there will arise the question whether one who secures a deficiency judgment against the dummy corporation under a prior or subsequent note can reach the land thus transferred to the bank. Since under the New York statute the dummy corporation and the bank are separate legal entities with legal and equitable title in the dummy corporation prior to the conveyance to the bank, the problem is really the usual one which arises in every case involving fraudulent conveyances—was the conveyance fraudulent as to the plaintiff?

If the bank required the dummy corporation to execute a written memorandum stating that it held title as trustee for the bank, then the bank would have the legal interest under the Statute of Uses, assuming the trust was passive.⁸¹ If the trust was active, then the bank would have only the equitable interest. If the dummy corporation was solvent at the time of executing the memorandum, then the gift would not be fraudulent; if the corporation would be left insolvent, then the gift would be fraudulent. The problems are the same as in conveyance of legal title to the bank.

Statutes in some states raise a presumption that the title was placed in the name of the third person in order to defraud creditors of the real purchaser.⁸² Where this presumption is rebutted, or where there is no statute, the equitable interest of the real purchaser would be prior in time to the rights of creditors of the third party. Being prior in time, only the creditors of the third party who relied should be protected.

If the real purchaser desires to conceal his identity from the vendor, he will have the straw man, who is now an agent for an undisclosed principal, buy the land in his own name with money furnished by his principal. From the purchaser's point of view, the transaction is simply a purchase-money trust; from the vendor's point of view the transaction is a contract with or conveyance to the agent of an undisclosed principal.

81. *Bing v. People* (1930) 254 N. Y. 484, 173 N. E. 687.

82. *Ind. Stats.* (1934) sec. 14,739-14,741; *Kan. Gen. Stats.* (1935) c. 67, secs. 406-408.

If *A*, the agent of *P*, the undisclosed principal, represents to the vendor, *V*, that *A* is buying the property for *X*, it is clear that a conveyance to *A* or a contract with *A* made because of the misrepresentation can be set aside for fraud.⁸³ Not only would the contract be induced by fraud but there would be such a mistake as to the identity of the purchaser that the contract would be wholly void for want of two parties,⁸⁴ unless *A* was personally bound, in which case it would be voidable by *V*. This result would follow whether or not *V* would have sold to *P*. Usually there are additional factors in this type of case to justify rescission and a right to a reconveyance.

When *P* knows that *V* will not sell to him at any price he may employ *A* to buy the land in *A*'s name. If *V* owns other land in the neighborhood and *P* desires to use the land purchased from *V* in such a way as to reduce the market value of the land retained, then *V* would be entitled to relief because of the fraud and actual damage.⁸⁵ In this type of case there is generally a misrepresentation as to the identity of the real purchaser and as to how the land will be used.⁸⁶

A more difficult problem arises when *V* does not own other land in the neighborhood and would not suffer any pecuniary loss if *P* used the land for purposes other than those declared by *A*. If *V* had no objection to selling to *P* at the price paid by *A*, then the right of *V* to dispose of his property to whom he pleases has not been damaged. If, however, *V* did not object to selling to *P* at any price and *P* or *A* knew this fact, in most states *V* would be entitled to rescind the contract or to a reconveyance of title if a deed has been executed and delivered to *A*.⁸⁷ So long

83. *Brett v. Cooney* (1902) 75 Conn. 338, 53 Atl. 729; 5 Williston, *Contracts* (Rev. ed. 1937) 4269, sec. 1525; Restatement, *Agency* (1935) secs. 263, 339, 369; Restatement, *Contracts* (1932) sec. 481, comment c.

84. 5 Williston, *Contracts* (Rev. ed. 1937) 4240, sec. 1517; Restatement, *Agency* (1935) sec. 369; Restatement, *Agency* (Tent. Draft No. 6, 1931) 176.

85. *Thompson v. Barry* (1903) 184 Mass. 429, 68 N. E. 674; *Coan v. Consolidated Gas Electric Light and Power Co.* (1915) 126 Md. 506, 95 Atl. 151.

86. For collection of cases on misrepresentation as to intended use of land, see Note (1911) 20 Ann. Cas. 913.

87. *Morrow v. Ursini* (1921) 96 Conn. 219, 113 Atl. 388; *Siess v. Anderson* (1911) 159 Mo. App. 656, 139 S. W. 1178; *Archer v. Stone* (1898) 78 L. T. R. (N. S.) 34. Restatement, *Agency* (1935) sec. 304; cf. sec. 292, comment c. See McCleary, *Damage as Requisite to Rescission for Misrepresentation: II* (1937) 36 Mich. L. Rev. 227, 244 et seq. *Contra: Lashley v. Lashley* (1924) 205 Ky. 601, 266 S. W. 247.

as title has not been transferred to a bona fide purchaser for value or one entitled to the protection of the recording act, there is no reason why a court should not compel a reconveyance. But, if *V* learns the identity of the real purchaser before executing and delivering the deed, a conveyance to the real purchaser or his agent would constitute a waiver of the right to compel a reconveyance. The vendor should have rescinded the contract and refused to convey.⁸⁸

Although *V* may have objected to selling to *P* at any price, he would have no grounds for rescission or for a reconveyance if at the time of the contract neither *A* nor *P* knew this fact. It is permissible for an agent to represent that he is not acting for any one so long as this is not done to induce third persons to deal with him when it is known by the agent or his principal that these persons would not deal with the principal. Consequently, in all of these cases involving the use of a straw man to purchase land for one to whom the vendor would not sell at any price,⁸⁹ the validity of the transactions depends upon whether the principal or his agent knew that the vendor would not sell to the principal and whether the agent represented that he was not acting for *P*. Of course, if *A* said he was acting for *X*, then the case would come under those considered earlier. If *A* can buy from *V* the land desired by *P* without representing that he is agent for one other than *P* and without expressly or impliedly representing that he is not acting for *P*, the transaction is perfectly valid and free from fraud.⁹⁰ Thus the duty is placed upon the owner of the property to inquire of the one seeking to buy whether he is acting for himself or for an undisclosed principal and the name of such undisclosed principal.

Suppose that *A*, a member of the white race, purchases land in an exclusive residential area for *P*, a member of the negro race. If *A* does not represent that he is buying the land for himself, or for *P* or for any other person, can *V* rescind on the

88. *Whitney v. Allaire* (1847) 4 Denio (N. Y.) 554, aff'd (1848) 1 N. Y. 305, 4 How. Prac. 447; 2 Pomeroy, *Equity Jurisprudence* (1918) 1863, sec. 897.

89. If *V* would have sold to *P* at the price *A* agreed to pay, *V* would have no cause for rescission though *A* stated that he was not buying the land for *P*. *Diamond v. Shriver* (1911) 114 Md. 643, 80 Atl. 217; *Smith v. Wheatcroft* (1878) 9 Ch. D. 223.

90. *Cole v. Hunter Tract Improvement Co.* (1910) 61 Wash. 365, 112 Pac. 368, 32 L. R. A. (N. S.) 125; *Dyster v. Randall and Sons* [1926] 1 Ch. 932.

ground of fraud?⁹¹ In such a transaction *V* assumed that *A* was buying the land for his own use or for an undisclosed principal of the white race. Since this assumption is a natural one, should not the burden be placed upon *A* to disclose to *V* the race of the real purchaser, and any other unusual circumstances connected with the purchase?

Occasionally a school, church, hospital or other charitable institution may desire to purchase adjoining land to be used in connection with the institution. If the owners of the land object to selling to the charitable institution, should the court sustain a purchase through a third party because the public would benefit if the institution could acquire title? In a few cases a decision of this type might possibly be justified on the ground that the institution could have acquired title by eminent domain proceedings. This reason could not be given where such power could not be employed by the charitable institution.

It is possible to make a transaction technically legal without securing results different from those obtained by an illegal one. If the institution suggests to a friend that it would like to have land owned by *V*, and the friend then purchases this land with his own money, stating that he is not the agent of any one, there is nothing illegal in a subsequent sale to the institution. While the friend was morally obligated to sell to the institution at the price he paid, he is not legally bound to do so. Consequently, the court could sustain this transaction.⁹² If sustained because the friend of the institution was the real purchaser, would a court refuse to sustain a similar transaction if the use of the land would be detrimental to adjoining owners?

There remains to be considered the case where *V* is willing and perhaps eager to sell to *P*, but at a price far in excess of the price asked of others.⁹³ This type of case may arise from the reputed wealth of *P*, or from the fact that *V* knows *P* needs his land and intends to refuse to sell unless he receives a very high price for it. *P* may be a factory that intends to buy rural land

91. Cf. *Cole v. Hunter Tract Improvement Company* (1910) 61 Wash. 365, 112 Pac. 368, 32 L. R. A. (N. S.) 125.

92. *Nash v. Dix* (1898) 78 L. T. R. (N. S.) 445.

93. *A* was employed to buy land for a railroad. Plaintiff orally agreed to sell his land to *A* for \$8,500. When plaintiff learned that the land was to be used for railroad purposes he successfully demanded \$18,000 by refusing to convey for \$8,500 because the contract was not in writing. *Weigold v. Pittsburg, C. & W. R. R.* (1904) 208 Pa. 81, 57 Atl. 188.

at the price of such land for farming purposes. All the owners are willing to sell to *P*, but if they knew all the facts they would demand a higher price. Therefore, *P* employs a straw man to buy this land, not recording any deeds until all the desired land has been secured. Then the straw man conveys to *P*. The vendors immediately seek to have their deeds set aside on the ground that *A* said he was buying the land for himself, and that he was not buying the land for *P*.

The first question that must be decided is the market value of the land. It may be contended that the price expected from *P* was the true value of the farming land because it was suitable for industrial use. This argument assumes that *P* must have this particular land. Usually *P* does not need the particular land and found it suitable for industrial use because of the low cost per acre. The price of the land is one of the factors that must be considered in determining whether it is suitable for industrial use. If the value of the land for farming purposes is \$100 per acre and this price was used to determine the location of a factory, it can hardly be said that the owners of the land should be entitled to \$200 per acre. If the courts should treat a purchase by *A* for *P* as fraudulent, entitling *V* to rescind, would this promote the public welfare? If not, should this fact influence the court in determining what is or is not fraudulent? The decisions on this point have treated misrepresentations as to the identity of the real purchaser as not fraudulent where *V* had no objection to selling to the real purchaser but simply wanted a higher price.⁹⁴

It is becoming increasingly necessary to sell land by employing a real estate broker to procure purchasers willing and able to pay the desired price. It may safely be assumed that real estate brokers greatly assist both vendor and purchaser in the sale of land and should be protected as much as possible by the courts.

If *O* owns land worth \$80,000 and desires to sell it, he will likely give several brokers the right to sell the land for a certain commission. Assuming that the commission promised is two per cent and that *O* has reserved the right to sell directly to persons not procured by the broker, *O* will be willing to sell for \$78,400 if he is sure that he will not have to pay the broker's

94. *Standard Steel Car Co. v. Stamm* (1904) 207 Pa. 419, 56 Atl. 954. Restatement, *Agency* (Tent. Draft. No. 6, Explanatory Notes, 1931) 180.

commission. A number of decisions have placed upon O the duty of asking the brokers and the purchaser to learn whether he was interested in the land by one of the brokers.⁹⁵ This view seems to be preferable to the attitude of those courts which protect a broker only if the vendor actually knew that the purchaser had been procured by the broker.⁹⁶

If the vendor tries to defraud the broker of his commission by selling to a straw man who will later convey to a purchaser procured by the broker, all courts will protect the broker by allowing him to recover his commission in an action against the vendor.⁹⁷

If the broker desires to buy the land for himself and also to secure a commission by selling to a straw man who will later convey to the broker or to a purchaser at an increased price, all courts will deny the broker his commission and will award to the vendor all profits realized by the broker.⁹⁸

The real problem arises when the purchaser procured by the broker employs a straw man to offer to buy the land from the vendor. If the vendor inquires of the broker he will learn that the broker did not procure the straw man; if the vendor inquires of the straw man whether he is buying for another, the vendor will be told that he is not. After the vendor has sold to the straw man for \$78,400, he learns that the real purchaser was one procured by the broker. It is quite clear that the real purchaser has received the \$1600 commission which should have been paid to the broker. Therefore, if the court permits the broker to recover his commission from the vendor,⁹⁹ the vendor should be permitted to recover \$1600 from the real purchaser, in addition to the purchase price of \$78,400. To avoid circuitry of action the broker should be allowed to recover \$1600 in a

95. *Hight v. Marshall* (1916) 124 Ark. 512, 187 S. W. 433; *Adams v. Decker* (1899) 34 Ill. App. 17; *Hovey & Brown v. Aaron* (1908) 133 Mo. App. 718, 113 S. W. 718; *Sussdorff v. Schmidt* (1873) 55 N. Y. 319. Cases are collected in Note (1908) 9 Ann. Cas. 433.

96. *Offutt & Oldham v. Winters* (1928) 227 Ky. 56, 11 S. W. 979; *Quist v. Goodfellow* (1906) 99 Minn. 509, 110 N. W. 65 (purchase through straw man).

97. *Butler v. Ouwelant* (1903) 90 Conn. 434, 97 Atl. 310; *Lorton v. Trail* (Mo. App. 1919) 216 S. W. 54.

98. *Van Raalte v. Epstein* (1906) 202 Mo. 173, 99 S. W. 1077. The principal's remedies and the cases are set forth in Note (1929) 62 A. L. R. 63.

99. *Glade v. Eastern Ill. Mining Co.* (1908) 129 Mo. App. 443, 107 S. W. 1002; *Schultz v. Zelman* (Tex. Civ. App. 1908) 111 S. W. 776.

tort action against the real purchaser for interfering with the broker's contractual rights.¹⁰⁰ Those courts¹⁰¹ which have denied relief to the broker in an action against the vendor have not declared that there could be no recovery in an action by the broker against the real purchaser. If the courts desire to protect the broker, purchasers should not be permitted to defeat his right to a commission by using a straw man.

The rule suggested in the *Restatement of Agency* is one which protects the vendor if he uses due care and one which can be adopted by most states by distinguishing or explaining earlier decisions. In section 448, comment f, the rule is thus stated:

If care upon the part of the principal would not have revealed the connection between the broker and the customer, and the principal makes a lower price because of his belief that he would not have to pay commissions, the broker's compensation is reduced to the extent that the price has been thereby lowered, as where the customer acts through a straw man who purports to be buying on his own account.

If the vendor used due care to ascertain the identity of the real purchaser then the broker could recover from the real purchaser or his agent any loss caused by their defrauding him of his commission.¹⁰²

When the vendor learns the identity of the real purchaser before executing and delivering the deed to the straw man, the broker should be entitled to the commission if the vendor conveys. The vendor could protect himself by refusing to convey for any price less than the contract price plus the broker's commission.¹⁰³ A conveyance for the contract price would probably indicate that the land could not be sold to any one at the contract price plus the broker's commission and that the vendor would not lose by paying a commission to the broker.

100. *Skene v. Carayanis* (1926) 103 Conn. 708, 131 Atl. 497. Cf. *Gormley v. Dangel* (1913) 214 Mass. 5, 100 N. E. 1084 (real purchaser secured right to sell land for commission then sold to his own straw man. Broker awarded commission in action against real purchaser).

101. *Ritch v. Robertson* (1920) 93 Conn. 459, 106 Atl. 509, 7 A. L. R. 81; *Stone v. Kreis* (1916) 202 Ill. App. 43; *Goldstein v. Walter* (N. Y. City Com. Pleas 1889) 15 Daly 397, 7 N. Y. S. 756.

102. *Skene v. Carayanis* (1926) 103 Conn. 708, 131 Atl. 497.

103. See *Skene v. Carayanis* (1926) 103 Conn. 708, 131 Atl. 497, 498 (vendor could rescind and refuse to convey). Contra: *Quist v. Goodfellow* (1906) 99 Minn. 509, 110 N. W. 65 (vendor could not rescind and refuse to convey).

STRAW MEN AS CONDUITS OF TITLE

At common law it was necessary to use a third party to convey property to certain persons. If a husband desired to convey title to his wife, he had to convey first to another person who would then convey to the wife. The unity of person associated with the marital status prevented a direct conveyance, for one could not convey to himself.¹⁰⁴ However, even before the adoption of statutes permitting a direct conveyance from one spouse to the other, some equity courts sustained such deeds by holding that the husband held the legal title in trust for his wife, the grantee.¹⁰⁵ Upon the death of either spouse the legal title vested in the wife or her heirs because there was no longer any reason for continuing the trust.¹⁰⁶

Today many states have statutes which expressly permit a conveyance from one spouse to the other.¹⁰⁷ Other states have properly held that the statutes permitting married women to convey their separate property allow conveyances between

104. 3 Tiffany, *Real Property* (2d ed. 1920) 2330. Cf. "It is not possible under existing law for a man to make a contract with himself." Restatement, *Contracts* (1932) sec. 15, comment a.

105. *Wilkerson v. Powell* (1927) 173 Ark. 33, 291 S. W. 799; *Carson v. Berthold & Jennings Lumber Co.* (1917) 270 Mo. 238, 192 S. W. 1018. Contra: *Price v. Brittain* (1923) 80 Ind. App. 294, 137 N. E. 620.

106. *Wilkerson v. Powell* (1927) 173 Ark. 33, 291 S. W. 799; *Carson v. Berthold & Jennings Lumber Co.* (1917) 270 Mo. 238, 192 S. W. 1018.

107. Ala. Code (1928) sec. 8272; *Osborne v. Cooper* (1896) 113 Ala. 405, 21 So. 320; Ark. Dig. Stats. (Pope's 1937) sec. 1866. Cal. Deering's Civil Code (1931) sec. 158; D. C. Code (1929) tit. 14, sec. 25; Fla. Comp. Gen. Laws (1927) sec. 5670; Fla. Const. art. X, sec. 1; *Jordan v. Jordan* (1931) 100 Fla. 1586, 132 So. 466 (only homestead cannot be conveyed from one spouse to the other); Ill. Rev. Stats. (1937) c. 68, sec. 9; Iowa Code (1935) sec. 10449; Me. Rev. Stats. (1930) c. 74, sec. 1; Md. Code Ann. (1924) art. 45, sec. 1; Mass. Gen. Laws (1932) c. 209, sec. 3; Mont. Rev. Code (1935) sec. 5786; Nev. Comp. Laws (1929) sec. 3373; N. H. Pub. Laws (1926) c. 288, sec. 5; N. J. Rev. Stats. (1937) tit. 37, c. 2, sec. 18; N. M. Stats. Ann. (1929) c. 68, sec. 201; *Duncan v. Brown* (1914) 18 N. M. 579, 139 Pac. 140; N. Y. Cahill's Consol. Laws (1930) c. 14, sec. 56; N. D. Comp. Laws (1913) sec. 4411; Ohio Ann. Code (Throckmorton's 1936) sec. 7999; Ore. Code Ann. (1935 Supp.) tit. 33, c. 2, sec. 203; Pa. Purdon's Stats. (1936) tit. 48, sec. 71; R. I. Gen. Laws (1938) c. 417, sec. 4; S. C. Const. art. XVII, sec. 9; see *Green v. Cannady* (1907) 77 S. C. 193, 57 S. E. 832, 834; S. D. Comp. Laws (1929) sec. 171; Tex. Const. art. XVI, sec. 50; Tex. Vernon's Stats. Ann. (1914) art. 1115; *Martin v. Barnum* (Tex. Civ. App. 1926) 286 S. W. 550, semble; Utah Rev. Stats. (1933) tit. 45, sec. 1; Wash. Remington's Comp. Stats. (1922) secs. 5828, 10,572; W. Va. Code (Mitchie's 1937) sec. 4737; Wis. Stats. (1937) sec. 246.03; Wyo. Rev. Stats. (1931) c. 69, sec. 101, semble.

Cf. Del. Rev. Code (1935) sec. 3541 (*H* and *W* may contract with each other); Okla. Comp. Stats. (1931) sec. 1655 (*H* and *W* may contract with each other).

spouses.¹⁰⁸ Only a few states do not permit such conveyances and, consequently, in those states a straw man must be used.¹⁰⁹

Unfortunately many states which permit direct conveyances between spouses have made no provision for a conveyance from one spouse to himself and the other spouse as joint tenants or as tenants by the entirety. It is well known that in some states¹¹⁰ the Married Woman's Property Acts have been held to have abolished estates by the entirety through the destruction of the unity of person, and that in other states¹¹¹ the statutes abolishing the presumption of a joint tenancy have been construed so as to prevent the creation of estates by the entirety. In these cases, too, a straw man would be required as a conduit of title. It has been contended that where there is a conveyance to a straw man for the purpose of having him convey to husband and wife as tenants by the entirety or as joint tenants, the Statute of Uses will execute the use so as to make the husband and wife tenants in common even though the straw man conveyed to them as tenants by the entirety or as joint tenants. This argument has not been accepted and the trust has been considered an active one, being for a special purpose.¹¹²

108. Ariz. Rev. Code (1928) sec. 2174; *Luhrs v. Hancock* (1899) 6 Ariz. 340, 57 Pac. 605, aff'd (1901) 181 U. S. 567; Colo. Stats. (1935) c. 108, sec. 10; *Wells v. Caywood* (1877) 3 Colo. 487; Ind. Stats. (1934) sec. 5645; *Price v. Brittain* (1923) 80 Ind. App. 294, 137 N. E. 620 (*H* must join in deed of *W* to *H*); Kan. Const. art. XV, sec. 6; Kan. Gen. Stats. (1935) c. 23, sec. 201; *Brecheisen v. Clark* (1918) 103 Kan. 662, 176 Pac. 137; *Craine v. Edwards* (1891) 92 Ky. 109, 17 S. W. 211 (*H* can convey directly to *W*); *Sayers v. Coleman* (1872) 5 Ky. Op. 733 (*W* can not convey directly to *H* because *H* must join in deed and he can not convey to himself); Mich. Comp. Laws (1929) sec. 13,057; *Burdeno v. Amperse* (1866) 14 Mich. 91, 97; Miss. Code Ann. (1930) sec. 1940; *Virden v. Dwyer* (1901) 78 Miss. 763, 30 So. 45; R. S. Mo. (1929) sec. 2998; *Smelser v. Meier* (1917) 271 Mo. 178, 196 S. W. 22; Neb. Comp. Stats. (1929) c. 42, sec. 202; *Lavigne v. Tobin* (1897) 52 Neb. 686, 72 N. W. 1015; N. C. Const. art. X, sec. 6; *McLamb v. McPhail* (1900) 126 N. C. 218, 35 S. E. 426; Tenn. Code (1932) sec. 8460; *Hicks v. Sprinkle* (1923) 149 Tenn. 310, 257 S. W. 1044.

In the following states married women have power to convey title to land but there is no decision sustaining a conveyance from one spouse to the other. Conn. Gen. Stats. (1930) sec. 5154; Idaho Code Ann. (1932) tit. 31, sec. 903; Va. Code (1936) sec. 5134.

109. Ga. Code (1933) tit. 53, sec. 504; *Goss v. Brannon* (1928) 167 Ga. 498, 146 S. W. 187 (*W* can convey to *H* only with court order); Minn. Stats. (1927) sec. 8621; cf. Minn. Stats. (Mason's 1938 supp.) sec. 8229 (validates certain prior conveyances between spouses); Vt. Public Laws (1933) sec. 3074.

110. Cases are collected in 1 Tiffany, *Real Property* (2d ed. 1920) 651, n. 25.

111. Cases are collected in 1 Tiffany, *Real Property* (2d ed. 1920) 650, n. 23.

112. *Crow v. Crow* (1932) 348 Ill. 241, 180 N. E. 877.

If a straw man is used as a conduit of title, neither his wife nor his creditors receive any interest or right to any interest in the land.¹¹³ Because the straw man has title for only a brief period of time, there is little danger that persons protected by the recording act might secure prior rights to the property.

CONCLUSION

This discussion of certain problems arising from land transactions involving straw men shows rather clearly that the modern problems are basically similar to those which arose from conveyances to a feoffee to uses to hold title for the benefit of the feoffor or grantor. The owners of property convey title to straw men to conceal their ownership from the general public, to defraud creditors, to prevent judgments from being a lien on the land, to limit their liability, to make their interest more alienable, or to evade taxation. These are the same reasons why land was conveyed to the use of the grantor prior to 1535.

Because land is now the subject of commercial transactions and is frequently conveyed from one person to another, would it not be best for the courts to aid the owners to conceal their ownership from the general public, *but not from their creditors or the state*, and to make title more alienable, free from the liens of judgments? Much of this could and should be done by the courts themselves. They created most of the rules of conveying at a time when England was an agricultural nation and when land was purchased principally for use as a residence or as a long-term investment. Therefore, the courts are best qualified to change these rules to meet modern needs. There is a certain inconsistency in the cases defeating the purpose of statutes by declaring them unconstitutional or by misconstruing them and those decisions requesting legislative aid to change the rules of law established by the courts.

113. 1 Bogert, *Trusts and Trustees* (1935) sec. 146.