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office. The Wyoming Constitution imposes no qualifications on candidacy for office so as to pre-empt the field and bar legislation on the issue. Equal political rights, including the right to run for office, are only guaranteed to the competent and the worthy, and there is no constitutional bar to legislation against the incompetent. Those who desire to destroy the very government in which they seek office are neither competent nor worthy of equal political rights to run for that office. They cannot resort even to the protection of the 14th Amendment of the United States Constitution guaranteeing equal rights, for the application of those provisions has been held to regard the rights of citizens of sister states, and not to deprive a state of control over its own citizens.[36]

So far as Wyoming is concerned, a loyalty oath as applied to candidates for public office is constitutionally possible. The loopholes of the already existing statute[37] prohibiting the Communist Party from participating in elections as a party, would be effectively plugged by an individual test to bar persons sympathetic to the Communist cause from running for office under the guise of another banner.

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UNJUST ENRICHMENT OF FRAUDULENT GRANTEE

A coal miner and his wife, believing they were obligated to pay a $500 doctor bill for their adult child, transferred real property to the husband's brother, under an oral agreement to reconvey upon demand. Eleven years passed, the husband died, and the grantee refused to reconvey to the wife. The wife, being in possession, bought suit to have the title quieted in her and the grantee filed a cross complaint for ejectment. Both suits were dismissed by the trial court. The Supeme Court modified the holding and ordered the grantee the reconvey. *Held,* that when a conveyance is made to defraud creditors and there is a parol agreement to reconvey, the purported fraud on creditors will be balanced against the unjust enrichment of the grantee and, if justice requires, the grantee will be compelled to recovery. *Wantulok v. Wantulok,* 223 P. (2d) 1030 (Wyo. 1950).

When a grantor transfers his property without consideration to avoid attachment or execution by creditors, the overwhelming majority rule is: that as between the parties the grantee holds both legal and equitable titles against all the world except defrauded creditors and the fradulent

36. 14th Amendment does not operate to deprive state of power over its own citizens. Little v. Miles, 204 N.C. 646, 169 S.E. 220 (1933) (by implication).
37. Note 12, supra.

grantee will be able to enforce the conveyance in a court of law.[1] Even though there is an agreement to recovery upon demand, the fraud may be set up by the grantee as an absolute defense.[2]

When such conveyance without consideration has taken place together with the agreement to reconvey, the injustice of the rule is apparent when we consider the penalty imposed for the offense involved. In North Carolina the grantor lost his land when he made such conveyance for the purpose of defeating recovery against grantor as surety on a note. Though the suit on the note was never brought, the courts would not enforce the parol agreement to reconvey, holding that the mere evil intent was enough to defeat recovery.[3] In the instant case, if the rule had been followed, the widow would have lost her home valued at $8500 for a $500 doctor bill of which there was doubt if the grantors were obligated to pay and which in any case had been settled in full. It is said that such transfer is contrary to good morals, public policy, and the law,[4] then it follows that it is good morals, public policy, and the law to permit a son,[5] daughter,[6] brother,[7] or wife[8] to take, without payment, the home from the grantor, who, in many instances was not trying to defraud his creditors at all, but merely trying to avoid losing the home while he was saving money to pay his creditors. That a large per cent of the cases involve such close relations can be determined by mere inspection of titles alone as *Roe v. Roe, Doe v. Doe, etc.*

There are well recognized exceptions to the rule even in those courts which refuse to consider the point of unjust enrichment of the grantee. The homestead being exempt from attachment by creditors, there is, therefore, no fraudulent conveyance (intent is immaterial).[9] If the grantor can prove he was advised or influenced by the grantee[10] or an attorney[11] he can recover. There can be no fraud when a minor transfers his property and thereby prevents creditors from "seizing what they had no right to seize."[12] If the fraudulent grantee makes a procedural misstep and does not allege the fraud,[13] or does not admit his own immoral purpose,[14] and the grantor can prove the agreement to reconvey without alluding to the

1. 37 C.J.S., Fraudulent Conveyances, sec. 264.
2. 24 A.J., Fraudulent Conveyances, sec. 117.
3. Jackson v. Marshall's Adm'r., 5 N.C. 323, 3 Am. Dec. 695 (1809).
4. Sorrentino v. Sorrentino, 75 N.Y.S. (2d) 813 (1947).
5. Asher v. Asher, 278 Ky. 802, 129 S.W.(2d) 552 (1939).
6. Englund v. Berg, 70 S.D. 334, 17 N.W.(2d) 638 (1945).
7. Wantulok v. Wantulok, 223 P.(2d) 1030 (Wyo.) (1950).
8. Mirza v. Mirza, 318 Ill. App. 640, 48 N.E.(2d) 746 (1943).
9. Freemon v. Funk, 85 Kan. 743, 117 Pac. 1024 (1911), 46 L.R.A. (N.S.) 487, 496.
10. Novak v. Nowak, 216 Ind. 673, 25 N.E.(2d) 993 (1940).
11. Wittner v. Burr Ave. Development Corp., 222 App. Div. 285, 226 N.Y.S. Supp. 124 (1927).
12. Bloomingdale v. Chittenden, 74 Mich. 698, 42 N.W. 166 (1889).
13. Link v. Link, 90 N.C. 253 (1883); Taylor v. McMillan, 123 N.C. 390, 31 S.E. 730 (1898); Gallo v. DeMichael, 118 Conn. 487, 172 A. 922 (1934).
14. Glenn, Fraudulent Conveyances, vol. 1, sec. 118a; Carmen v. Athearn, 77 Calif. App. (2d) 585, 175 P.(2d) 926, 933 (1947).

fraud, the grantor can recover. When trust and confidence has been reposed in the grantee then the burden is upon the grantee to show that the transaction is fair and proper.[15]

Other courts, especially in later years, have adopted various theories to avoid the harsh effects of the rule. In Nebraska, where the grantor retained property sufficient to satisfy his only creditor he was entitled to a reconveyance.[16] In Rhode Island, a reconveyance was permitted to the children of the grantor on the theory that only creditors were injured by the fraud and others could not avail themselves of it as a defense.[17] This same thought had been expressed in 1669, "That he who has committed iniquity shall not have equity, but the iniquity must be done to the defendant himself."[18] In Indiana, the court refused to follow the rule holding that the public interest was higher than that of the parties.[19] In Texas, the motive of putting the property beyond the reach of creditors did not prevent a trust from being declared in the property if the anticipated indebtedness never arose.[20] In Oregon, it was said the party may purge himself of his wrongful conduct by adequate and effective repudiation and his right to relief would be restored.[21] In Missouri, the court refused to follow the rule when its application would have worked injustice.[22]

Therefore, the trend in later years is to grant more and more exceptions to the rule and to view the whole transaction not only as to the fraud perpetrated upon creditors, but also the unjust enrichment of the equally fraudulent grantee. The culminating decisions are the instant case and another 1950 case in Rhode Island in which the court said the conveyance was good between the parties and also the agreement to recovery was good.[23]

To the question, "Can the agreement of the fraudulent grantee to reconvey be enforced?", the solution is to adopt a negative answer and then create so many exceptions that in any given case, except that rare one which is completely average a decision either way is possible.[24] But the policy of unjust enrichment is gaining more favor as more courts have the initiative to go against the out-moded rule and permit recovery where the equities of the case are in favor of the grantor. As to the rule discouraging such conveyances it is doubtful if many of the grantors are cogni-

15. Lane v. Gugsell, 113 Ind. App. 676, 47 N.E.(2d) 835 (1943).
16. Bartlett v. Bartlett, 15 Neb. 593, 19 N.W. 691 (1884).
17. Hudson v. White, 17 R.I. 519, 23 A. 57 (1891).
18. Jones v. Lenthal, 1 Ch. Cas. 154, 22 Eng. Rep. 739 (1669).
19. Gilchrist v. Hatch, 183 Ind. 371, 106 N.E. 694 (1914).
20. Harmon v. Schmitz, Tex. Comm. App. 39 S.W.(2d) 587 (1931); This position had been upheld by the Supreme Court of Texas in Rivera v. White, 94 Tex. 538, 63 S.W. 125, 126 (1901).
21. Dickerson v. Murfield, 173 Ore. 622, 147 P.(2d) 194, 199 (1944).
22. Cook v. Mason, 353 Mo. 993, 185 S.W.(2d) 793 (1945).
23. Cirillo v. Cirillo, 76 A.(2d) 71 (R.I. 1950).
24. Professor Wade, 95 Pa. L.R. 302 (1947).

zant of it and if they were they would do the same thing because at the time of the conveyance the grantor has complete confidence that the property will be returned to him when he wants it. Research did not disclose any case in which a court having once made a stand on an exception to the rule, was later reversed on this stand, either by a higher court or by the same court. Therefore, the stand having been made in Wyoming that there will not be a blind following of the rule, but that each case will be decided on its equitable merits, there seems little likelihood in the future of fraudulent grantees getting property by a mere oral agreement to reconvey of which promise they have no intention of keeping.

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