

Real Property--Statute of Frauds--Constructive Trust Affecting Interest in Land Arising from Confidential Relation (Foreman v. Foreman, 251 N.Y. 237 (1929))

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to foreclose the mortgage, *held*, as to plaintiff the condition reserving title was void and the mortgage upon chattels given to her created a lien upon the ranges in the possession of the mortgagor, as fully as would have been the case had an absolute title thereto been acquired by it. *Cohen v. 1165 Fulton Ave. Corporation*, 251 N. Y. 24, 166 N. E. 792 (1929).

Prior to the enactment of the Uniform Conditional Sales Act,¹ gas ranges were regarded as personal property and, even if attached, did not become part of the realty.² This law was designed for a double purpose: To protect buyers of real estate upon which some types of property are attached in such a manner as to render uncertain their character as realty or personalty; and to protect the conditional vendor of a fixture.³ Under the present statute, the question as to whether chattels affixed to realty become a part thereof is no longer to be determined by the intent of the parties, but the intention which the law deduces from all the circumstances of the annexation.⁴ The inclusion of goods affixed to the realty and severable without material injury to the freehold, discloses an intention to protect a purchaser or mortgagee of real estate with respect to articles which might not be strictly chattels real, but which, none the less, in the common understanding of interested parties, are fairly regarded as part of the freehold. The Act provides a fair method for protection to all.

In *Madfes v. Beverly Development Corporation*,⁵ decided on the same day as the *Cohen* case, a similar state of facts was presented, except that the record did not disclose a personal property clause in the mortgage. Hence, the question of whether gas ranges were now to be regarded as personalty or realty, was squarely before the Court. It was held that gas ranges were still to be regarded as personalty⁶ and judgment was rendered for the defendant, *Crane, J.*, dissenting.

R. L.

REAL PROPERTY—STATUTE OF FRAUDS—CONSTRUCTIVE TRUST AFFECTING INTEREST IN LAND ARISING FROM CONFIDENTIAL RELATION.—For business reasons, husband requested wife to take deed to real property in her name on the promise to reconvey upon demand. Husband paid purchase price of land, managed and improved it, and continually exercised the dominion that goes with ownership. Wife

¹ Personal Property Law, Sec. 67; added by L. 1922, ch. 642, Sec. 2.

² *Central Union Gas Co. v. Browning*, 210 N. Y. 10, 103 N. E. 822 (1913); *Davis v. Bliss*, 187 N. Y. 77, 79 N. E. 851 (1907).

³ *Kohler Co., Inc. v. Brasun*, 249 N. Y. 224, 227, 164 N. E. 31 (1928).

⁴ *Metropolitan Stone Works, Inc. v. Probel Holding Corp.*, 131 Misc. 519, 227 N. Y. S. 414 (1928).

⁵ 251 N. Y. 12, 166 N. E. 787 (1929).

⁶ *Supra* Note 2.

died intestate before completion of the trust. In an action brought by husband against wife's heir, an infant son, to compel conveyance in fulfillment of the oral trust, the Trial Court held that the trust was unenforceable under the Statute of Frauds. On appeal, *held*, reversed. The wife would have been guilty of an abuse of confidence by disclaimer during life. Her heir, therefore, cannot nullify the trust but must fulfill same by conveying land to husband. *Foreman v. Foreman*, 251 N. Y. 237, 167 N. E. 428 (1929).

This case seems to settle for all time the question as to whether a resulting trust can be created by oral agreement under like circumstances. Sections 242 and 94 of the Real Property Law, invoked by the defendant, are held to be of no avail and this decision is in harmony with a long line of authorities.¹ Under the common law, if lands were conveyed to one person, the consideration for which was wholly paid by another, a trust resulted inevitably in favor of the person who paid the price.² The purpose of Section 94 of the Real Property Law was to abrogate this rule, but it has been construed that "it is only the common law trusts for the benefit of an individual from whom the consideration for a grant issues, and resulting from the fact of payment of the consideration and having no other foundation, that the statute abolishes."³ As to Section 242, the rule is now settled by repeated judgments of the New York courts that the statute does not obstruct the recognition of a constructive trust affecting an interest in land where a confidential relation would be abused if there were repudiation without redress of a trust orally declared.⁴ Where the admitted facts prove a fiduciary relationship, that of husband and wife, supplemented by an oral agreement, part performance and indication of willingness to complete performance except for the death of the wife, with certain result of working a hardship on plaintiff and unjust enrichment of defendant, the Statute of Frauds cannot be used as an instrument of fraud and a court of equity, within its broad remedial powers, will give that decision which the justice of the case demands.⁵

J. M. C.

¹ *Sinclair v. Purdy*, 235 N. Y. 245, 253, 139 N. E. 255, 258 (1923); *Gallagher v. Gallagher*, 135 App. Div. 475, 120 N. Y. Supp. 18, *aff'd* 202 N. Y. 572, 96 N. E. 1115 (1911); *Leary v. Corvin*, 181 N. Y. 222, 229, 73 N. E. 984 (1905); *Goldsmith v. Goldsmith*, 145 N. Y. 313, 39 N. E. 1067 (1895); *Wood v. Rabe*, 96 N. Y. 414, 48 Am. Rep. 640 (1884).

² *Garfield v. Hatmaker*, 15 N. Y. 475, 477 (1857); *cf.* *Scott*, *Resulting Trusts in Purchase of Land*, 40 Harv. L. Rev. 653.

³ *Carr v. Carr*, 52 N. Y. 251, 260 (1873).

⁴ *Jeremiah v. Pitcher*, 26 App. Div. 402, 49 N. Y. Supp. 788, *aff'd* 163 N. Y. 574, 57 N. E. 1113 (1900); *McKinley v. Hessen*, 202 N. Y. 24, 95 N. E. 32 (1911); see *Burns v. McCormick*, 233 N. Y. 230, 135 N. E. 273 (1922).

⁵ *Sinclair v. Purdy*, *supra*.