

plied its officers with reasons for keeping silent; and so we must say that the railway company is still at liberty to rescind the contract if it wishes to do so; but rescission does not mean that either party may appropriate to its own use the joint property of both, acquired under the contract, without paying therefor. 2 Chitty's Contracts, 1089*n*. In so far as the contract has been executed both parties are bound, and the right of each in the property acquired pursuant to its provisions must be respected. The seizure of the line on the twenty-seventh of February, by the railway company, was clearly as illegal as if the contract were free from objections. Whether there is any means by which either party may acquire the interest of the other in the property in controversy is not a question now presented for consideration. Nor is it necessary to ascertain what interest each party has in the telegraph line. It is enough that the property is owned by the parties to the contract jointly, and that the railway company has wrested the possession from its associate without warrant or authority of law. The parties must be restored to the position in which they were before the seizure, and for that purpose the injunction will be allowed.

NOTE. See *Western Union Telegraph Co. v. Union Pacific Railway Co.* 3 FED. REP. 721.

UNITED STATES *v.* HART.

(*Circuit Court, W. D. Tennessee.* ———, 1880.)

1. SUCCESSION TAX—CONSTRUCTION OF A DEED—ADEQUATE CONSIDERATION.—A deed from a mother to her sons conveying land "for and in consideration of love and affection, and the further consideration of the assistance they have rendered me since the death of my husband," is not a deed of gift made without valuable and adequate consideration, so that the grantees take a succession subject to a tax, within the meaning of the act of June 30, 1864. Section 132, 13 St. 288.

W. W. Murray, for plaintiff.

Harris & Turley, for defendant.

HAMMOND, D. J. This case is submitted for the construction of a deed from Nancy Boon to her sons, whereby she conveys to them a tract of land "for and in consideration of the love and affection that I have for my sons, and the further consideration of the assistance they have rendered me since the death of my husband." There is no proof obtainable of the character of the assistance rendered by the sons, nor of the extent of it, but it is agreed by the parties that if the deed on the face of it imports a deed of gift without valuable and adequate consideration, the grantees took a succession liable to the tax imposed by the internal revenue act of June 30, 1864, (13 St. 288,) and the United States is entitled to recover the land in this action of ejectment against the defendant in possession.

The succession tax cannot be defeated by reciting a nominal consideration which would be deemed valuable in the technical sense of that term, for the act of congress says the consideration must not only be valuable but *adequate*. Chancellor Kent says that notwithstanding the high moral obligation of a child to support a parent, there is no legal obligation to do it. 2 Kent. 208. And while it is true that the law implies no promise on the part of the parent to pay for necessaries, and in the absence of a contract to do so will not presume one, there is no doubt that such a contract may be a valuable and adequate consideration to support a deed of bargain and sale. *Lynn v. Lynn*, 29 Pa. St. 369; *Keeler v. Baker*, 1 Heisk. 639.

I think it is plain, from the recital of this deed, that there was some other consideration than bare love and affection, and, in the absence of proof to the contrary, the recital of it imports that it was, in the sense of the law, sufficiently valuable and adequate to take the case out of the category of a deed of gift. If the recital of the further consideration appeared on the face of it to be *nominal* only, the ruling would be otherwise; but it does not so appear. The assistance may have been of a kind which would find no adequate compensation in the transfer of this land, or it may have been very slight. The grantor seems to have appreciated it, and, in the

absence of exact knowledge, we cannot say that it was only nominal, or only necessities for which she was not bound to pay.

Judgment for the defendant.

MACK & Co. v. McDANIEL.

(Circuit Court, E. D. Arkansas. October, 1880.)

- I. ATTACHMENT—REMOVAL OF PROPERTY OUT OF THE STATE—ARKANSAS STATUTES.—A statute in Arkansas declares a creditor may have an attachment against his debtor who “is about to remove, or has removed, his property, or a material part thereof, out of this state, not leaving enough therein to satisfy the plaintiff’s claim, or the claim of said defendant’s creditors.”

Held, that a merchant who did not have property enough to pay his debts, and who invested a material portion of his assets in cotton and shipped it out of the state, was liable to attachment under this statute; that the plaintiff did not have to show the removal was made for a fraudulent purpose; and that the fact that the shipments of cotton out of the state were usual and customary with the defendant and with merchants generally doing business in the state, constituted no defence to the attachment.

Attachment.

The plaintiff sued out an attachment against the property of the defendant. The affidavit for the attachment was based on the sixth subdivision of section 388, Gantt’s Digest, which declares the plaintiff may have an attachment against his debtor who “is about to remove, or has removed, his property, or a material part thereof, out of this state, not leaving enough therein to satisfy the plaintiff’s claim, or the claim of said defendant’s creditors.”

The defendant filed an affidavit denying the grounds of attachment. On the trial of this issue it was shown that the defendant was a retail merchant, doing business at Arkadelphia, in this state; that at and before the time the attachment was sued out he was insolvent, and wholly unable to pay his debts; that his property consisted chiefly, if not alto-