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river nearer to Glover's Station, and which, it is contended, will answer the call.

These difficulties, we are of opinion, are all removed, by considering the courses called for by the complainants with relation to the courses of the river. Above Glover's Station, and until you reach the bend of the river, above which the complainants' entry is surveyed, the course of the river is east and west. It there assumes a different direction, and its course is north and south. By surveying the entry at the point where the complainants have located their land, it assumes a shape adapted to the course of the river. At any point below where it is situated, and until you reach the place called Glover's Station, it is impossible that it can be located. This circumstance is sufficient, in our opinion, to establish the branch which was called for, as it is the first you meet with above the bend; and when that is ascertained, there is no longer any difficulty in locating the complainants' lands.

The jury find, that the tree called for is very conspicuous, and that previous to the date of the complainants' entry, a tree very near the spot where that is situated was marked D. L. Although a tree of a particular species, at a distance not precisely limited, may be uncertain, where that tree abounds, the impression of a certain mark upon such a tree is a sufficient identification, when accompanied with the other circumstances of this case, which might have been resorted to by a subsequent locator, to prove the identity of this tree.

In giving this opinion, the court is not uninfluenced by an anxiety to save the early estates acquired in that country. Such was the laxity of the rules upon which the rights of individuals depended, under the land laws *177] of Virginia, that this court feels a strong sense of the necessity *of liberality in deciding upon the validity of entries.

The court, therefore, reverses the decree of the district court, and decrees a conveyance, to be executed by the defendant to the complainants, of that part of the land contained in his patent, which is included in the complainants' survey, and that each party pay their own costs.

Decree reversed.

VIER'S and wife v. MONTGOMERY.

Voluntary conveyance.

A court of equity will not interfere between a donee of land, by deed, and a devisee under a will of the donor, in a case where there is no fraud.

ERROR to the District Court of Kentucky, in a suit in chancery, brought originally by Montgomery against W. M. Viers and Patsy, his wife, late Patsy Henly, to compel the latter to convey to the former the legal estate in certain lands in Kentucky, which one Ebenezer Brooks, since deceased, conveyed, by deeds dated the 10th of November 1791, to the defendant's wife, while a widow, and which Brooks, by his last will, devised to the complainant Montgomery.

The bill charged that the only consideration of the deeds from Brooks to Patsy Henly was, that she should "take him as her husband," which she refused to do, but intermarried with the defendant, W. M. Viers. It did not aver, that the complainant was of kin to the deceased, or that he had any

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equitable claim, other than as a devisee. Nor did it charge the defendant Patsy with any promise of marriage, or any breach of such a promise, nor with fraud in obtaining the deeds. The will of Brooks, referred to in the bill, called the complainant his friend and cousin. The deeds were of bargain and sale in fee, and purported to be in consideration of 1100*l.*, Virginia currency, and contained a warranty against Brooks, and all claiming under him.

*The answer of the defendants denied that the consideration of the deeds was as stated in the bill, and averred that the defendant Patsy, although solicited, always refused to make any promise of marriage to the deceased ; that he often pressed her to accept his hand, which she for some time declined ; that he declared, he did not expect any consideration, but wished her to receive it as a gift, and that he did not expect she would marry him. It alleged, that Brooks had boarded in her house, some months, where he had been kindly and hospitably treated, without any charge being made against him, and suggested that this, together with the affection which he entertained for her, but which she always discountenanced, were his motives for giving her the land. That she, at last, by the advice of her friends, accepted it, and that, when he had executed the deeds, he voluntarily declared himself to be fully satisfied, in the presence of the subscribing witnesses.

The facts found by the jury were, that the defendant Patsy, by her conduct to the deceased, induced him to suppose that she would marry him, and that this encouragement or inducement was the only consideration she gave for the land, except his boarding ; but that she never made him any promise of marriage. That he had urged her to accept the land, before she agreed to take it, and had declared to her, that he did not expect to receive any consideration from her, but wished her to accept it as a gift ; and that, at the time he executed the deeds, he declared, he did not expect that she would marry him. That she was advised by her friends to take the land, before she agreed to accept it ; and that, after the execution of the deeds, she offered to return to him the land, but he would not receive it. That Brooks boarded in her house, and never paid her anything therefor, except the land. The jury also found the will of the deceased, and the devise to the complainant.

The decree of the court below, upon argument, was, that the defendants should convey the land to the complainant, and that the complainant should pay the defendants the amount of Brooks's board, and the taxes which had been paid by the defendants, with interest.

*Which decree was, by this court, without argument, reversed, [*179 and the complainant's bill dismissed, with costs.

Decree reversed.