

of buying out Haley Parkins' interest in the estate. It does not appear that any such or other sum was paid to her, nor did she execute a relinquishment of her interest, and therefore her title did not pass. But the fact that such a sum was necessary to be advanced shows that the creditors knew that there was an outstanding interest.

3. As to Martha J. Chapman's interest. There is nothing in the evidence to indicate that either she, or those representing her, knew of the said deed of trust, or had any connection therewith, nor whether they, or either of them, were *sui juris*, and if so, during what period.

4. The same appears to be true with respect to Elizabeth Hicks.

5. The same is true as to George Purdy.

It is therefore ordered, adjudged, and decreed that said plaintiffs have leave to proceed to sell under the decree of foreclosure heretofore ordered the undivided two-sevenths of the title to said property described, to-wit, the interests of William M. Purdy and John J. Purdy, heirs of Aaron Purdy. And it is further ordered that the other five-sevenths be vested in said Haley Parkins, James R. Purdy, Maud Chapman, George Purdy, and Elizabeth Hicks, each respectively an undivided one-seventh interest in the said property.

WITHNELL v. COURTLAND WAGON Co.

(*Circuit Court, D. Nebraska. November 9, 1885.*)

1. JUDGMENT—LIEN—EQUITABLE TITLE.

Where the mere legal title to land is in the judgment debtor, while the equitable ownership is in another, the lien of the judgment does not attach to the real ownership of the property under the Nebraska statute.

2. EXECUTION SALE—RECORD TITLE—RIGHT OF PURCHASER—EQUITABLE INTEREST.

Where a judgment plaintiff levies an execution upon land, and he or any one else purchases it at the execution sale, and pays his money, without any notice of the equitable interest of another, relying on the condition of the title as shown by the records at the time of the levy and sale, he acquires an interest in the land, and the statute of Nebraska awards the paramount right to the land to him who first puts his deed on record or files it in the proper office for that purpose, when the prior equitable interest depends upon an unrecorded deed.

In Chancery.

MILLER, Justice. This case was argued before me at the May term of the court, 1885, and taken under advisement. I am entirely satisfied that, at the time the judgment of the defendant corporation was rendered against Sibbitts, he was not the real owner of the property, and that plaintiff was; though the title apparent on the record in the office of the recorder of deeds was probably in Sibbitts. But I am of opinion that, under the decisions of the supreme court of Nebraska, and of the courts of a majority of the states, a judgment only becomes

a lien, when rendered, on such interest in the land as the defendant then has in it, and that if the mere legal title is in the judgment debtor while the equitable ownership is in another, the lien does not attach to the real ownership of the property. If, however, the judgment plaintiff levies an execution upon the land, and he or any one else purchases it at the execution sale and pays his money without any notice of the equitable interest, relying on the condition of the title as shown by the record in the office at the time of the levy and sale, he then, as an innocent purchaser, acquires an interest in the land. The statutes of Nebraska, in this state of case, award the paramount right to the land to him who first puts his deed on record, or files it in the proper office for that purpose, where the prior equitable interest depends upon an unrecorded deed as in this case. While this is not the usual rule, it is the law by express statute in Nebraska, as it has been construed by the supreme court of that state. Comp. St. Neb. p. 590, § 477, p. 389, § 16; *Mansfield v. Gregory*, 8 Neb. 434; S. C. 1 N. W. Rep. 382; *Harral v. Gray*, 10 Neb. 189; S. C. 4 N. W. Rep. 1040; *Bowen v. Billings*, 13 Neb. 439; S. C. 14 N. W. Rep. 152.

As plaintiff Withnell, at the date of the levy of defendant's execution, and before the day appointed for the sale of the land, had both the legal title and the superior equity, and had his deed duly recorded, there seems to be no doubt of his right to relief. A decree will therefore be entered making the preliminary injunction perpetual, and quieting plaintiff's title against the claim of defendant under his judgment against Sibbitts.

JOHNSON v. WILCOX & GIBBS SEWING-MACHINE CO.

(Circuit Court, S. D. New York. November 6, 1885.)

PLEADING—MOTION TO MAKE MORE DEFINITE BY SETTING OUT WRITTEN AGREEMENT—DEFECT OF PARTIES.

A motion to compel a plaintiff to make his complaint, which is on its face sufficient, more definite and certain by setting out at length a written agreement referred to therein, will not be granted for the purpose of enabling the defendant to demur to the complaint on the ground that there is a defect of parties.

At Law.

Stephen A. Walker, for the motion.

Stanley, Clarke & Smith, opposed.

COXE, J. This is a motion to make the complaint more definite and certain. The action is to recover damages for the infringement of a patent. The complaint alleges, in substance, that the plaintiff was the inventor of an improvement in sewing-machines; that upon his request the patent was issued to himself and one Emory; that this