

ments negating the facts and circumstances so set up in the bill in avoidance of the bar or defense." Tested by this rule, the present plea would seem to be bad. Assuming this to be so, however, the plaintiff's remedy is not by motion to strike it from the files, but by setting it down for argument.

The motion is denied.

FREUND v. YAEGERMAN.¹

(Circuit Court, E. D. Missouri. March 25, 1886.)

1. ASSIGNMENTS—SECTION 354, REV. ST. MO.—MORTGAGING ENTIRE ASSETS.

Petition for rehearing denied.

2. COURTS—CONSTRUCTION OF.

The only Missouri court which is an authoritative expounder of the state statutes is the supreme court.

In Equity. Petition by the defendant for a rehearing.

For a report of the previous opinion in this case, see 26 Fed. Rep. 812.

A. Binswanger and E. Smith, for complainant.

Robert Goode, for defendant.

BREWER, J., (orally.) In *Freund* against *Yaegerman* there is a petition for a rehearing. The case comes clearly within the line of the cases heretofore decided in this court, commencing with *Martin v. Hausman*, 14 Fed. Rep. 160, and ending with *Clapp v. Nordmeyer*, 25 Fed. Rep. 71. In the course of the various opinions that I have had occasion to express, I have stated fully my own views, and the reasons why, in deference to the opinions of the other judges in this district, including the presiding justice, I have made those decisions. In the last, or next to the last, of those cases I stated that that would be the rule of this court until there had been an authoritative declaration by the supreme court of the United States or the supreme court of the state of Missouri to the contrary. Now there is presented a decision of the Kansas City court of appeals which it is claimed enunciates views different from those announced heretofore, and in harmony with the opinions that I personally hold, and I am asked to reverse the line of decisions here. That is not an authoritative exposition of the law in Missouri. The St. Louis court of appeals may rule one way and the Kansas City court of appeals another. There is but the one authoritative expounder of the Missouri statutes in this state, and that is your supreme court. So the petition for the rehearing will be denied.

¹ Reported by Benj. F. Rex, Esq., of the St. Louis bar.

INGLES and others v. NEW ENGLAND MUT. LIFE INS. Co. and others.

(Circuit Court, D. Massachusetts. April 9, 1886.)

FRAUD ON CREDITORS—LIFE INSURANCE—PUB. ST. MASS. CH. 119, § 167.

Where a contract of insurance is made in furtherance of a conspiracy between the insured and his wife to defraud and cheat the creditors of the former, the most the creditors can reach, under the Massachusetts statute, (Pub. St. c. 119, § 167,) is an amount equal to the premiums paid with intent to defraud creditors, with interest thereon.

In Equity.

C. J. Babbitt and Stearns & Butler, for plaintiffs.

A. D. Foster, for insurance company.

H. L. Harding and Henry Jackson, for Susan D. Harwood.

COLT, J. The plaintiffs in this suit, as creditors of Norman B. Harwood, seek to reach and apply the proceeds of a policy of insurance issued by the defendant company in favor of Harwood, for the benefit of his wife and children, who are also made parties defendant. The bill alleges that the contract of insurance was made in furtherance of a conspiracy between Harwood and his wife to defraud and cheat the creditors of the former, and that the premiums paid upon the policy were paid out of moneys fraudulently obtained from his creditors. The present motion raises the question whether, under these circumstances, the court should continue the injunction restraining the insurance company from the payment of the policy to the widow. The policy contains a provision that the contract shall be governed and construed by the laws of Massachusetts. Section 167 of chapter 119 of the Public Statutes of Massachusetts provides as follows:

"A policy of insurance on the life of a person, expressed to be for the benefit of a married woman, * * * whether procured by herself, her husband, or any other person, * * * shall inure to her separate use and benefit, and that of her children, independently of her husband or his creditors, or the person effecting * * * the same, or his creditors. * * * When a policy is effected by any person on his own life, or on the life of another, expressed to be for the benefit of such other or his representatives, or a third person, the person for whose benefit it was made shall be entitled thereto against the creditors and the representatives of the person effecting the same. If the premium is paid by a person with intent to defraud his creditors, an amount equal to the premium so paid, with interest thereon, shall inure to the benefit of his creditors, subject, however, to the statute of limitations."

The statute seems to provide specifically for the case before us. Admitting the allegations of the bill to be true, it appears that, upon the policy in suit, the premiums were paid by a person or persons with intent to defraud creditors. Under the statute, therefore, it seems clear that the most the creditors can recover is an amount