

court of the United States have held that a decree like that which was rendered in the suit of *McClure v. Stang* was absolutely void, for lack of jurisdiction of the person of the defendant. Being an equitable action, and equity acting only upon the person, and the person not being within the jurisdiction of the court, that decree must be treated in the federal courts as void. *Hart v. Sansom*, 110 U. S. 151; S. C. 3 Sup. Ct. Rep. 586. Redden, purchasing from McClure after that decree, got no higher title—no better title—to the land than he would have had but for the decree. He simply purchased from McClure, who had purchased from Russum, and all that he got was the naked legal title, the full equitable title being in Stang. Counsel says in his brief that Redden purchased upon the advice of counsel,—advice to the effect that McClure had a perfect title, legal and equitable; and, further, in reliance upon the decree,—a decree authorized by the letter of the statute. I do not think the advice of counsel cuts any figure in the case at all. It is not a question of the good faith of the transaction. He was chargeable with notice of all that the records of Shawnee county showed. They showed a mortgage from Russum to his mortgagee. They showed, in the records of the district court, the foreclosure of that mortgage, the sale of the property, and the confirmation of the sale, and therefore the vesting of the full equitable title in the purchaser. They showed the conveyances from that purchaser down to Stang. So, whether he did, as a matter of fact, examine the records or not, he had constructive notice that the full equitable title was in Stang; and whether counsel advised him otherwise is immaterial.

There is one matter of costs that I think there was an error in, and should be corrected. The decree charged all costs against Redden; and, of course, upon the face of it, that carried all the costs in the suit from the time that McClure filed his bill, before Redden had acquired any interest in the land, or had been made a party to the suit,—all the costs of the state, as well as this, court. That is a mistake, and the order will be modified so as to carry the costs against Redden from the time only that he was made a party to the suit. The other costs will be paid by McClure, the party who commenced the action.

## BUDLONG and others v. KENT and others.

## NORWEGIAN PLOW Co. v. SAME.

(Circuit Court, D. Nebraska. July 15, 1886.)

**FRAUDULENT CONVEYANCES—CONSIDERATION—SATISFACTION OF DEBTS.**

At a hearing in equity, on pleadings and proofs in support of a creditors' bill, where it fairly appears that defendant actually owed the party to whom he has conveyed, and that the value of the property transferred was not out of proportion to the debt, with accruing interest, and the expense of handling the property, the conveyance will not be disturbed.<sup>1</sup>

Creditors' bills to set aside a conveyance of lands and goods made by the defendant to one of his creditors at about the time the grantor failed in business. Heard on pleadings and proofs.

*Harwood, Ames & Vielly* and *Chas. O. Whedon*, for complainants.  
*R. St. Clair* and *A. H. Connor*, for defendants.

**BREWER, J.** These are creditors' bills. The complainants are judgment creditors of one Smith P. Tuttle, who, in the latter part of 1884, failed in business. At about the time of his failure he conveyed certain real estate and his stock of goods to the officers of the First National Bank of Minden, to secure his indebtedness to the bank. These conveyances are challenged by the bills as fraudulent.

The complainants have clearly failed to make out a case. Tuttle was indebted to the bank in the sum of about \$9,000. The *bona fides* and amount of this debt are undisputed. It is doubtful whether the property conveyed equaled in value the debt. The highest estimate placed by complainants' witnesses upon its value is only \$13,900, while the defendants' witnesses all place it below the face of the debt. Even if it were actually worth all that complainants claim, it would not be sufficient to impugn the good faith of the transfer, for the debt bears constant interest, and it costs something to dispose of real estate and a stock of goods. If more than the debt should be realized, garnishment proceedings will reach the excess. The testimony shows that Tuttle used other property to pay other debts, and fails to show that he retained anything except that which was exempt.

The representations made by officers of the bank, even if all made as claimed, work no estoppel. No debt was created on the faith of them, and they were simply expressions of confidence in Tuttle's financial condition, which the conduct of the bank shows it believed to be well founded.

Decree will be entered in favor of the defendants.

<sup>1</sup>For a full discussion of the question of fraudulent conveyance, see *Platt v. Schreyer*, 25 Fed. Rep. 83, and note, 87-94.