

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.¹

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.

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

BARDEN v. CITY OF DULUTH and others.*(Circuit Court, D. Minnesota. 1886.)***1. MUNICIPAL CORPORATIONS—ACTION TO ENFORCE SPECIAL ASSESSMENTS—STATUTE OF LIMITATIONS.**

Where a municipal corporation is authorized by its charter to improve streets, and to assess the cost thereof against adjacent lots, and to issue certificates showing the amount assessed against each lot; and where, by the terms of the charter, these certificates, unless paid within 30 days, are made collectible by a foreclosure action,—the statute of limitations begins running against each certificate at the expiration of said 30 days.¹

2. SAME—SUSPENSION.

Under such circumstances, the running of the statute is not suspended by subsequent legislation changing the boundaries and powers of the municipality.

In Equity.

Bill in equity by the purchaser of certificates issued in April, 1871, by the defendant municipality, for assessments it had made against, and improvements it had made upon, city lots, the present occupants of which were made co-defendants with the city. The special relief sought was payment by the city of these several amounts, or, in default thereof, a decree of foreclosure, and a judicial sale of said lots. Defendants set up the statute of limitations as a special plea in bar.

Brisbin & Farwell, for complainant.

Eusign & Cash and *W. W. Billson*, for defendants.

BREWER, J. The facts in this case are as follows: In 1870 the city of Duluth was an incorporated city. Under its charter it had authority to grade and improve streets, and cast the expense thereof upon the adjoining lots. It did, during that year, grade and improve Superior street, and, upon completion of the work, street commissioners' certificates were issued against each lot. These certificates were assignable. It is conceded that the work was fully and properly done, and the assessments legally made. These street commissioners' certificates were dated and issued April 18, 1871. The individual defendants are owners of lots on Superior street against which some of these street commissioners' certificates were issued. The charter of the city provided that, in case these certificates were not paid within 30 days, an action to foreclose the lien might be prosecuted in the name of the city of Duluth, in the same manner that real-estate mortgages were foreclosed. In February, 1877, the legislature of Minnesota passed an act to create the village of Duluth out of a part of the territory of the city of Duluth. Practically this ended the city of Duluth. The village organization took its place as to all

¹Respecting the statute of limitations, and when it begins to run, see *King Iron Bridge & Manuf'g Co. v. County of Otoe*, 27 Fed. Rep. 800, and note, 801-807.