

shown but what this conversion took place before the maturity of the debt due complainant. The strong probabilities are that Creighton embezzled the money as soon as it came into his possession. Under such circumstances, upon what ground can it be fairly claimed that, when the embezzlement took place, the money had become that of complainant? In the absence of evidence showing that the money received from Gifford had been appropriated in Creighton's hands to the payment of complainant's claim, it must be held that the plea of payment has not been made out, and that complainant is entitled to a decree against the defendant Blizzard for the sum due, and for the foreclosure of the mortgage.

Warren Gifford, the holder of the second mortgage, is also made a party defendant to the bill, and answers the same, setting up the execution of the mortgage to himself as security for the money by him advanced, and averring the delivery of the money to Creighton as a payment of the mortgage to complainant. There is nothing in the evidence which places Gifford in any other position than that occupied by Blizzard. It is not claimed that complainant has by act or word estopped himself from showing the exact facts of the case, and the defense relied on by Gifford is the same as that pleaded by Blizzard, to-wit, payment of the debt due complainant. The evidence failing to support this defense, the complainant is entitled to a decree of foreclosure, as prayed for, against all the defendants.

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NEAL v. FOSTER *et al.*

(Circuit Court, D. Oregon. August 20, 1888.)

**1. JUDGMENT—RES ADJUDICATA.**

The determination of a point or question in any legal proceeding binds the parties thereto and their privies in any subsequent litigation that may arise between them, although the cause of action in the two proceedings is not otherwise identical.

**2. EVIDENCE—DECLARATIONS—VENDOR AND VENDEE.**

The acts and declarations of a vendor in possession after the sale are competent evidence against the vendee on the question of the character and purpose of such sale.

**3. TAXATION—TAXABLE PROPERTY—TAXABLE CREDITS.**

A person cannot lawfully nor truthfully omit a note from his statement of his taxable credits on the ground that there is an understanding between him and the maker thereof that he will not deduct the amount of the same from the value of his property listed for taxation.

**4. COURTS—FEDERAL COURTS—JURISDICTION—MOTIVE OF SUITOR.**

The motive with which a person purchases property or a claim has nothing to do with his right to maintain an action thereon or thereabout in the national courts; and so it does not affect the jurisdiction of said courts if the purchase is made with the expressed intention of suing therein.

**5. JUDGMENT—LIEN—FRAUDULENT CONVEYANCE—RIGHTS OF CREDITORS.**

A conveyance of real property, though void as to creditors asserting their right against it, passes all the estate of the grantor in the premises to the grantee; and therefore the lien of a subsequent judgment against the grantor, which only attaches to property then belonging to him, does not affect the property so conveyed; and the creditor first seeking to set aside such conveyance obtains a prior right to satisfaction thereout, from the commencement of his suit for that purpose.

#### 6. FRAUDULENT CONVEYANCES—WHAT CONSTITUTES—CONSIDERATION.

The grantee in a conveyance of real property by an insolvent debtor having paid at least three-fourths of its cash value therefor, by the redemption of certain wheat-warehouse receipts of the grantor, concerning which he was then liable to a criminal prosecution, and the discharge of certain obligations on which he was surety, *held*, that the circumstances do not warrant the conclusion that the conveyance was made or taken with intent to hinder, delay, or defraud creditors.<sup>1</sup>

#### 7. SAME.

A conveyance by an insolvent debtor of a block of brick buildings for the alleged consideration of the surrender of six notes of the grantor for the principal sum of \$16,000, payable to the grantees, which notes are in fact without consideration. *Held*, that the conveyance was voluntary, and therefore fraudulent as against the creditors of the grantor.<sup>1</sup>

(*Syllabus by the Court.*)

Suit to Enforce Judgments.

*C. E. S. Wood* and *George H. Williams*, for plaintiff.

*Earl C. Bronaugh* and *L. Flinn*, for defendants *Crawfords* and *Pearce*.

*J. K. Weatherford* and *Charles E. Wolverton*, for defendants *Goltra*, *Walden*, *Liles*, and *Baltimore*.

**DEADY, J.** This suit is brought by the plaintiff, a citizen of Illinois, against *James A. Foster*, *John A. Crawford*, *William Crawford*, and *Ashby Pearce*, citizens of Oregon. The plaintiff sues as the assignee and owner of two certain judgments against the defendant *Foster*, and to set aside, as fraudulent, three certain conveyances executed by *Foster* to *John A. Crawford*, *William Crawford*, and *Ashby Pearce*, respectively. *William H. Goltra*, *E. Walden*, *John R. Baltimore*, and *J. S. Liles*, citizens of Oregon, and judgment creditors of *Foster*, are also made parties defendant.

It is alleged in the bill that on and prior to February 6, 1884, *Foster* was indebted to *Sibson, Church & Co.* in the sum of \$13,034.96, which claim was on July 15, 1885, assigned to *Sibson, Quackenbush & Co.*, who on March 8, 1886, obtained judgment thereon for \$14,066.72, in the circuit court of Linn county, Or., which judgment was then docketed therein, and on March 15th an execution issued thereon and was returned unsatisfied; that on June 11, 1886, *Sibson, Quackenbush & Co.* sold and assigned said judgment to the plaintiff, who now owns the same.

That on March 8, 1886, *Noon & Co.* obtained a judgment in said circuit court against *Foster*, on a promissory note and account for goods, in the sum of \$1,920.35, which judgment was then docketed therein, and on March 15th an execution issued thereon and was returned unsatisfied; and that on June 19th *Noon & Co.* sold and assigned said judgment to the plaintiff, who now owns the same.

That when said debts were contracted, on which said judgments were obtained, *Foster* was the acknowledged owner of the following real prop-

<sup>1</sup>As to what constitutes a fraudulent conveyance, and what is sufficient proof of fraud to cause a conveyance to be set aside, see *Stoddard v. Rowe*, (Iowa,) 39 N. W. Rep. 84, and note; *Satterfield v. Malone*, 35 Fed. Rep. 445, and note; *Bernard v. Myroleum Co.*, (Mass.) 17 N. E. Rep. 887, and note.