

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.¹

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 grantee, which notes are in fact without consideration. *Held*, that the conveyance was voluntary, and therefore fraudulent as against the creditors of the grantor.¹

(*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-

¹As 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.

erty, situate in Albany, in said county and state: (1) The Magnolia flour-mill and lot, including the race connecting the mill with the Santiam water-ditch; (2) block 55, except two lots; (3) lot 1 in block 11; (4) one-half interest in the Albany water-works; (5) a parcel of land 74 feet by 100, with brick buildings thereon; and (6) part of lot 7 in block 4 with a brick store thereon; that on February 6, 1884, Foster conveyed all of said property except the fifth and sixth items to the defendant John A. Crawford, and on the same day conveyed the fifth item to the defendant William Crawford, and on February 7th conveyed the sixth item to the defendant Ashby Pearce; that each of said conveyances was voluntary and without consideration, and was made by the grantor, and accepted by the grantee, therein, with intent to hinder, delay, and defraud the creditors of Foster, and particularly the assignors of the plaintiff, Sibson, Quackenbush & Co., and Noon & Co.; that Foster is insolvent; that the property so conveyed was then worth \$110,000, and was all the property Foster had, and he is still in the possession and enjoyment of the same.

That subsequent to said conveyances the other defendants herein obtained judgments in said circuit court against Foster, as follows: Baltimore, March 10, 1884, for \$1,652.92; Goltra, February 23, 1886, for \$1,636.90; Liles, March 12, 1886, for \$1,049.75; and Walden, February 23, 1886, for \$568.50.

The prayer of the bill is that the conveyances be set aside as fraudulent, and the property be sold to pay the claims of the plaintiff, and the defendants Baltimore, Goltra, Liles, and Walden, according to their respective priorities.

The defendants Foster and the Crawfords, by their joint answer, admit the judgments against Foster, as stated in the bill, but deny that the plaintiff is the owner of any of them, and allege that the assignments thereof to him by Sibson, Quackenbush & Co. and Noon & Co. were made without consideration, and for the sole purpose of giving this court jurisdiction. They admit the execution of the conveyances to the Crawfords and Pearce, as stated in the bill, but deny that they are voluntary, or were made or accepted with intent to hinder, delay, or defraud creditors, and allege that at the date thereof Foster was short about 20,000 bushels of wheat, for which he had given receipts; and that Foster conveyed the items one, two, three, four, and five of said property, and certain book-accounts and grain-sacks, to the Crawfords, in consideration of John A. Crawford's taking up those receipts, and \$64,000 to be paid him by the surrender of certain notes and an account due from Foster to said John A., and certain other notes due from Foster to William Crawford, and the payment by John A. of certain notes of Foster's, on which he was surety; and that the conveyance to Pearce was made subject to Mrs. Foster's right of dower, in consideration of the payment by him of \$4,000 as security for Foster.

They admit that on, prior, and since February 6, 1884, Foster was and is insolvent, and aver that the property conveyed is not worth more than \$56,000.

The defendants Baltimore, Liles, Walden, and Goltra answer the bill jointly, admitting the allegations thereof, and that they are severally the owners of the certain judgments obtained by them in 1886, in the circuit court of Linn county, Or., against Foster, as alleged in the bill; and also allege that Goltra is the owner of a certain other judgment obtained by him in said circuit court, on February 23, 1886, against said Foster, on twelve promissory notes and one account theretofore assigned to him, for the sum of \$16,119.70, which judgments they allege are each a lien on the property of Foster in said county; and that the property conveyed to the Crawfords and Pearce was so conveyed with intent to hinder, delay, and defraud the creditors of Foster, including the defendants.

Afterwards the defendants Foster and the two Crawfords filed a cross-bill, alleging therein that on February 10, 1886, Goltra commenced a suit in the circuit court aforesaid against the plaintiffs in the cross-bill to enforce the judgment for \$16,119.70 theretofore obtained against Foster, as stated in his answer herein, against the property in question, on the ground that the conveyances thereof by Foster to the Crawfords and Pearce were invalid, because made with intent to hinder, delay, and defraud the creditors of the grantor, including Goltra and his assignors; that the defendants in said suit answered the complaint therein, denying the allegations of fraud, and alleging that said conveyances were made in good faith, and for an adequate consideration, to which answer there was a reply by Goltra; that the cause was heard on the issue thus made, when the court, on July 9, 1886, found in favor of the defendants, and dismissed the suit; that Goltra took an appeal to the supreme court of the state, where, on April 11, 1887, said appeal was dismissed, whereby the judgment of said circuit court remains in full force and effect, and Goltra is thereby estopped to say that said conveyances are invalid, for the reason assigned.

A demurrer to this cross-bill was overruled, and the same taken for confessed. 34 Fed. Rep. 496. And it is now admitted by counsel that Goltra is estopped to say in this suit, in support of said judgment, that these conveyances are invalid, because made in fraud of creditors.

But counsel maintain that the judgment of Goltra, obtained on February 23d, for \$1,637.20, is not within the operation of said estoppel, because the judgment was not included in the suit out of which the estoppel arises. It is true that the decree in the former case between the parties to the cross-bill was given in a suit in which the right to enforce this particular judgment against this property was not involved. But the question on which such right depends was so involved. A question contested and determined in one case is determined, so far as the parties to the same are concerned, for all time and all purposes. It cannot be ground over again in another action.

The question of the validity of Foster's conveyances to the Crawfords and Pearce, for the cause alleged, namely, that they were executed with intent to hinder, delay, and defraud creditors, was the principal and only contested question in the suit of Goltra against Foster and the Crawfords;