

SCOTT v. MEAD *et al.*¹

(District Court, S. D. New York. February 19, 1889.)

1. BANKRUPTCY—FRAUDULENT CONVEYANCES—HUSBAND AND WIFE.

The bankrupt, M., in 1866, some years before his insolvency, had a judgment recovered against him by default by one L. Before that he had dealt in real estate in his own name, and then held some property on which the judgment was a lien. Thereafter, he continued and extended his real-estate business, making all contracts and obligations in his own name, but taking titles in his wife's name. In 1867 he bought several lots, paying for them out of his own means, taking title in his wife's name. In 1870 and 1871 he built five valuable houses thereon, doing all the business in his own name, and subsequently collecting the rents in his own name, and using them at his discretion. *Held* (1) that, there being no fraudulent intent as respects subsequent creditors at the time of the purchase of the lots, the wife, under the New York statutes, should retain the money invested in the lots, less the then existing judgment of L. (2) That the title taken in the wife's name was designed as a cover only for the husband's business; that the buildings were not within the same protecting statute as the lots; that they were not intended as a gift to her, and, if they had been, the gift was not reasonable in amount, as respects existing or subsequent creditors, and was invalid as against existing creditors and also as against subsequent creditors misled by the husband's apparent possession and ownership of the property.

2. EQUITY—CONVEYANCE SUBJECT TO LIEN OF JUDGMENT—MARSHALING ASSETS—RELEASE.

M. having conveyed a house and lot subject to the lien of L.'s judgment, but without any agreement on the part of the grantee to pay it, it appeared that the amount of the judgment was neither deducted from the consideration nor part of the price. *Held*, that M. had no equity to require the grantee to pay L.'s judgment, and that the land did not become the primary fund therefor; and that L.'s subsequent release of that property did not prevent his recourse against the houses and lots in suit; the same as regards his release of other property at M.'s request.

3. CREDITORS' BILL—WIFE'S EQUITY—RENTS AND PROFITS.

Upon decree charging the property with payment of the bankrupt's unsecured debts, *held*, (1) wife first entitled to the proceeds of a house and lot previously settled upon her in good faith, the proceeds being probably used by the husband in payment of debts incurred in the new buildings; (2) wife answerable for such rents and profits only as came to her hands.

In Bankruptcy. Creditors' bill.

For facts, see decision on demurrer to amended complaint, 9 Fed. Rep. 91.

Nelson Smith and Coleridge A. Hart, for complainant.

Miller, Peckham & Dixon, for defendants.

BROWN, J. The complaint was filed in August, 1880, by John H. Platt, assignee in bankruptcy of Abraham Mead, to have applied to the benefit of the estate five houses and lots on the corner of Fifty-Fifth street and Sixth avenue, the title to which had been taken in the name of Sarah J. Mead, the bankrupt's wife, alleged to be in fraud of creditors. Upon the death of Mr. Platt, Mr. Scott, the succeeding assignee, was substituted as complainant. The general facts as charged in the bill are stated in the decision on the demurrer to the amended complaint, (9 Fed. Rep.

¹Reported by Edward G. Benedict, Esq., of the New York bar.

91,) where some of the other legal questions involved are also considered. It is unnecessary to repeat what is there stated. The answer denies all allegations of fraud.

The lots were bought by Mead in February and May, 1867, for about \$31,000, of which \$16,000 remained upon mortgage, and \$15,000 was paid by Mead in cash, or its equivalent. The title was taken in the name of his wife, Sarah J. Mead. In 1870 and 1871 Mead built upon the lots five houses, at a cost variously stated by Mead as from about \$115,000 to \$165,000, begun in the latter part of 1869, and completed in 1871. Of this sum \$76,000 was obtained upon bond and mortgage upon the same premises during the progress of the work; the rest was raised by Mead in various ways, from the sale of other real estate standing in his own or in his wife's name, from moneys borrowed by him, and by discounts which he obtained on accommodation notes at the Sixth National Bank.

Mead was by occupation a plumber. For some years prior to 1866 he had dealt to some extent in real estate, always taking title in his own name, excepting one house in Thirty-Sixth street, bought early in 1865, where he resided for a number of years, the title to which was taken in his wife's name, and, as he testifies, was "designed to be hers from the start." In 1866, Littlefield obtained a judgment against him by default for \$3,183.83, which was a lien on two houses and lots in Forty-Third street, then standing in his name. He was afterwards allowed to come in and defend, the judgment meantime standing as security. The case was litigated by him until 1876, when final judgment was entered for \$5,118.28. During this interval from 1867 to 1873 his speculations in real estate were gradually much enlarged. His obligations became heavy. All titles after 1866 were taken in the name of his wife or partner, except as to one house in West Twelfth street, in which there was an equity of \$5,000. Down to the end of 1872 the real-estate market was rising, and he realized considerable profits, which were mostly reinvested in property heavily mortgaged. He was unable to carry this property through the depression which followed the panic of 1873. Except the buildings and lots now in question, it was all disposed of by sales at a loss, by foreclosures with deficiency judgments, or by reconveyances to the grantors upon nominal consideration. At the end of 1873 he became distressed for money, paid little or no accruing interest after 1874, was insolvent in 1875, and in 1878 was adjudicated a bankrupt. This suit was commenced within two years after the delivery of the assignment to the assignee. The statute of limitations is therefore no bar to this suit.

For the defendants it is contended that there is no proof of any fraudulent intent as respects any creditor, existing or subsequent; and that no relief can be had upon the Littlefield claim, because he voluntarily released sufficient real estate which was primarily charged with the payment of his judgment.

The Revised Statutes of this state provide that where a grant is made to one person, and the consideration therefor paid by another, no use or trust shall result in favor of the latter, but the title shall vest in the for-

mer, except only that "such conveyance shall be presumed fraudulent as against creditors, at that time, of the person paying the consideration;" and, "if a fraudulent intent is not disproved, * * * a trust shall result in favor of such creditors to the extent necessary to satisfy their just demands." 1 Rev. St. p. *728, §§ 51, 52.

The above provisions apply to the original purchase, and to Littlefield's judgment, which was a claim then existing. Mead, as I have said, put about \$15,000 into this purchase in his wife's name. The statutory provisions do not apply to the improvements made upon the lots from three to five years afterwards, even though the land be held to belong to Mrs. Mead as against creditors. The husband's expenditures in building upon them valuable houses stand in no better position than a voluntary gift from husband to wife; and, as against creditors, if intended as a gift, it must stand or fall according to the rules applicable to such gifts, having reference to the debtor's means and a reasonable provision for his family, and the rights of creditors, existing and subsequent.

As respects the Littlefield claim, it is urged that a fraudulent intent is disproved by the circumstances, because the judgment was already abundantly secured, it is said, by real estate standing in Mead's name; because he had other personal means to a considerable amount; and because the inconveniences attending real-estate transactions in one's own name while a judgment in litigation attaches a lien upon them, furnish a perfectly innocent and justifiable reason for dealing in the name of another, without any presumption of a fraudulent intent. These considerations are entitled to much weight; and they would be deemed controlling were they not overcome by other evidence and by Mead's subsequent conduct. Besides the general evidences of his intention referred to below, the evidence demonstrates that Mead did not intend to leave any real estate standing in his name as a security for the Littlefield judgment any further than he could help; and that, long before Littlefield's final judgment was perfected, Mead withdrew his interest completely. He himself procured the release of one house in 1867 upon a nominal consideration. He sold the other to Mrs. Travis upon full consideration, in 1872; and a third in West Twelfth street, which was taken in his own name at the same time with the sale to Mrs. Travis, (probably as a substituted, though inadequate, security for the judgment to satisfy Mrs. Travis,) he sold with full covenants and warranty a few months afterwards, without reference to the judgment. This last house was sold on execution on the Littlefield judgment in 1876, realizing but \$1,000, and leaving upwards of \$4,000, besides 12 years' interest, still unpaid. My conclusion is that Mead not only meant to contest the Littlefield claim, but meant never to pay it if he could help it; and that his taking the subsequent titles in his wife's name was partly with this intent.

The two releases executed by Littlefield do not prejudice the claim under his judgment. The release of the house 103 West Forty-Third street in 1867 was evidently obtained by Mead himself, to enable him to convey that property, and thereby obtain a part of the consideration which was used to purchase the Sixth-Avenue lots in question. The re-