

5FED. CAS.—54

Case No. 2,805.

IN RE CLARK ET AL.

{4 N. B. B, 237 (Quarto, 70).}<sup>1</sup>

District Court, S. D. New York.

Nov. 7, 1870.

EXAMINATION OF BANKRUPT—RELEVANCY AND MATERIALITY OF EVIDENCE.

Where wife of a member of a bankrupt firm loaned the firm, previous to its bankruptcy, moneys arising from the sale of property which had been held in her husband's name, but the proceeds of which were promised to her in consideration of her executing a deed therefor, said moneys not appearing on the firm books to the credit of the wife, but to credit of her husband as a member of the firm, no separate account appearing in the husband's separate account-books.

except under the head of family expense—and where the husband purchased, as the agent of his wife in her absence from home, real estate, which was conveyed to her in her own name, and which real estate was improved by his wife through her husband, as her agent, and the implements paid for by firm checks, as in payment to her of her loans to the firm, this testimony being objected to as immaterial and irrelevant, and given under and subject to such objections, and the question as to what estate said bankrupt's wife had, and had she any estate except the property above referred to, and was she possessed of thirty-seven thousand dollars, being also objected to, *held*, the questions must be answered.

[In the matter of Clark, West, Maxwell and Davis.]

I, Isaac Dayton, register in bankruptcy, having charge of these proceedings, and holding examination of E. Spencer West, one of the above-named bankrupts, under section 26 of the bankrupt act of 1867 [14 Stat 529], hereby certify that in the course of said examination certain questions hereinafter stated at length, were refused to be answered by said E. Spencer West, and a certificate thereof and of the question so arising requested by him.

After testifying to the following effect: That his wife had loaned his firm money; don't know how much, or when; but at one time, in 1863, five or six hundred dollars; at another time, in 1864, about twenty-two thousand dollars; that this loan was a portion of the proceeds of the sale of a house which stood in his name, and which he promised to give to her in consideration of her executing the deed, and she was opposed to the sale of the property, and had hesitated to execute it without that assurance, and he did so give it to her; that this house cost eighteen thousand dollars and sold for thirty thousand five hundred dollars; that the money received for this was in check of the purchaser, payable to order of the bankrupt; that these were transferred to his firm. "Q. 410. What account did your firm keep with your wife as to this money (loan of five or six hundred dollars in 1863)? A. The firm of Clark, West & Co. had no account with my wife, and kept no account at any time, but the loan went into my own individual private expense account, as agreed in our copartnership between Clark and myself, that the expense account of either larger than the other should draw interest. Q. 428. Did you keep any account individually with your wife of this loan made by her, of the profits on the 34th street house and furniture? A. I kept no book-account, but we talked the matter over about what the amount was. Q. 429. Was any account kept by the firm of this amount? A. All money that passed this way through me was kept in my family expense account." That, in November, 1865, he heard by common report that land was for sale in 152d street; that his wife negotiated for this; was himself the party to the agreement as his wife was away from home at the time it was drawn and executed. The price was sixteen thousand dollars. That his wife made the necessary payments; three thousand dollars of the purchase-money was paid in checks either of himself or Clark, West & Co. Clark, West & Co. owed her that amount they had been having the use of her money; the deed of the property is in the name of his wife, Mrs. Sarah O. West That his wife built upon the property; that he acted as her agent in calling at various places to ascertain the price of materials, and after consultation

about the price requested the material to be sent and delivered, and on presentation, of the bill it would be paid for, and with various parties who were in the habit of performing certain portions of the work on the buildings, and that workmen they would employ would be paid on Saturday; don't know that he ever informed any one that he acted as agent may have done so; that he did not hire any workmen. The bills were presented to his wife; he looked over the most of them; bills were paid by checks of Clark, West & Co. The checks which were so given were to return the loan made by his wife. The work was done by the day's work; no accounts or memorandums were kept of payments or amounts due don't know how much it cost to build. Had some receipts and some checks (returned from bank), but these are lost or destroyed. This property he thinks worth sixty or seventy thousand dollars, or more, perhaps, but there are three mortgages on it-one for twelve thousand dollars, one for twenty-five thousand dollars, and one for fifty thousand dollars. There are sixteen lots in all; there is a brick house, frame house, and stable upon them; don't think he would advise their sale for four thousand dollars per lot. When the first frame house was completed he removed into it, and has remained there ever since, and has not paid his wife any rent; the second house (brick) is for sale, applications to-be made to bankrupt. don't know how much firm owed Mrs. West at any time; don't know how much has been paid to his-wife, or for her use; think she has been paid in full with interest No account has been kept with Mrs. West in books of the firm, or in bankrupt's private books, nor any account with E. S. West in the books of the firm (except his general expense account and loan-book account) to show how much Mrs. West was creditor or debtor at any time.

(All the foregoing testimony relating to the property of the bankrupt's wife was objected to as immaterial and irrelevant, and the questions were answered subject to that objection.) "Q. 632. What estate has Mrs. Sarah O. West? (Objected to as irrelevant, and requested to be certified by counsel for bankrupt.) Q. 633. Is Mrs. S. O. West possessed of any estate except the property in 152d street? (Same objection and request.) Q. 634. Is Mrs. S. O. West possessed of thirty-seven thousand dollars?" (Same objection and request, which questions the bankrupt requested

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to be certified to the judge for his opinion, which is hereby done.)

BLATCHFORD, District Judge. The questions must be answered. The clerk will certify this decision to the register, Isaac Dayton, Esq.

<sup>1</sup> [Reprinted by permission.]