

IN RE MEAD.

[19 N. B. R. 81; ¹ 2 N. J. Law J. 26.]

District Court, D. New Jersey. Oct. Term, 1878.

BANKRUPTCY-FRAUDULENT
CONVEYANCE-PURCHASER WITH
KNOWLEDGE OF
FRAUD-IMPROVEMENTS-INCUMBRANCES
PAID.

One who, with notice of the fraud, purchases property fraudulently conveyed by a bankrupt, has no right, after being compelled to surrender it to the assignee, to reimbursement either for improvements upon the premises or for moneys advanced to reduce incumbrances.

On petition to expunge claim of Edmund Mead.

NIXON, District Judge. The assignee of Peter Mead, bankrupt, filed a bill in this court, some years ago, to set aside, as fraudulent and void against creditors, a conveyance of real estate made by said Mead and wife to one Temperance Berry. The claimant in this case was one of the defendants in that suit, filing a separate answer and contesting the assignee's right to recover. The decree of the court was that the sale was fraudulent and void, and that the claimant, who was a purchaser of the premises of the bankrupt's grantee, had sufficient notice of the fraud to put him upon inquiry, and that, although he may have paid full value, he took the property subject to the right of the creditors of Peter Mead to be paid their debts.

The testimony in these proceedings disclose the fact that when Peter Mead transferred the premises to Berry they were incumbered with two mortgages; one to a Mr. Bonnell, to secure the payment of five hundred dollars, and the other to a Mr. Whitty, for two thousand dollars, and that Berry paid off the latter in the month of October, 1868, while the property was held by his wife. He did not cancel the mortgage,

however, but caused it to be assigned to one Alfred Berry, who says that he was ignorant of the transaction at the time and paid nothing on the mortgage. There seems to be some confusion in the testimony whether the Bonnell mortgage was paid by Berry before the execution of the agreement to sell the property to the claimant on the 19th of May, 1869, or with the five hundred dollars that Edmund Mead advanced on the delivery of the said agreement. But it is a matter of small consequence whether the mortgages were in fact paid by Edmund Mead or by Berry. In either case the person paying has no claim upon the estate of Peter Mead, as against his creditors, to have the amount refunded. The court has already decided that the transfer to Berry was a fraud and that Edmund Mead had cause to know that the fraud was being perpetrated upon the creditors of Peter Mead.

Under these circumstances he purchased the property at his peril, and when, after a long litigation, he was compelled to surrender it to the assignee, there does not remain in him any claim either for improvements upon the premises for reduction of incumbrances. The case falls within the rulings of the supreme court in Railroad Co. v. Soutter, 13 Wall. [80 U. S.] 517, and there must be an order entered expunging the claim.

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