Case No. 9,518.

IN RE MEYERS.

{2 Ben. 424;[1] 1 N. B. R. 581 (Quarto, 162).}

District Court, S. D. New York. May, 1868.

BANKRUPTCY—STAYING PROCEEDINGS—FRAUDULENT CONVEYANCE—RESULTING TRUST.

1. Where after a bankrupt had filed his petition and been adjudged a bankrupt, creditors who held judgments against him, and had proved their debts in the bankruptcy proceedings, commenced a suit in a state court against him and others, charging that certain real estate which stood in the name of the bankrupt's wife, had been bought by him and paid for with his money in fraud of his creditors, and that a trust had resulted in their favor from such purchases, and praying that their judgments might be satsified out of such property: *Held*, that, by proving their debts in the bankruptcy proceedings, the creditors waived all right of action against the bankrupts, on either the judgments or the original indebtedness; and that proceedings in such suit must be stayed, under the 21st section of the bankruptcy act [of 1867 (14 Stat. 526)].

{Distinguished in Hill v. Phillips, 14 R. I. 95.}

2. If the allegations of the creditors were true, the money used by the bankrupt in the purchase of the real estate was "property conveyed by the bankrupt in fraud of his creditors," under the 14th section of the act, and passed to the assignee in bankruptcy under that section.

{Cited in Re Rainsford, Case No. 11,537.}

On the 8th of June, 1865, Martin Maas recovered a judgment, in the supreme court of New York, against the bankrupt, Louis Meyers, and one Sondheim, as joint debtors, for $1,130.70. It was duly docketed and execution was issued on it and returned unsatisfied. It was now wholly due, with interest from January 8th, 1866. It was founded on two promissory notes of the debtors, one made July 18th, 1860, at eight months, for $679.01, and one made August 25th, 1860, at eight months, for $322.48, and an account

for $9.62, for goods sold. The consideration for the notes and account was goods sold to the debtors by Maas, in July, August, and September, 1860. On the 9th of April, 1866, Bache, Ulman & Bach recovered a judgment in the supreme court of New York, against the bankrupt and Sondheim, as joint debtors, for $1,167.08. It was duly docketed and execution was issued on it and returned unsatisfied, and it was now wholly due, with interest from its recovery. It was founded on a promissory note of the debtors, made August 10th, 1860, at eight months, for $781.56. The consideration for the note was goods sold to the debtors by Bache, Ulman & Bach, in July, August and September, 1860. On the 27th of March, 1868, Maas and Bache, Ulman & Bach commenced an action, in the supreme court of New York, against the bankrupt and his wife, the complaint in which, after setting forth the foregoing facts, averred that, while the bankrupt was so indebted to them, and while he was insolvent, and on or about the 14th of April, 1864, he purchased, with his own money and his own means, certain land in the city of New York, with the dwelling house thereon, particularly described in the complaint; that, on such purchase, the said house and lot of land were conveyed, by the direction of the bankrupt and at his request, to his wife, by the vendors, by a deed of conveyance recorded July 5th, 1864; that the bankrupt paid the whole or the greater part of the consideration or purchase money of the conveyance, and more than sufficient thereof to pay the amount of the said two judgments and interest; that the consideration or purchase money was $7,400; that the house and lot were now worth over $20,000; that the conveyance was voluntary and without consideration, as between the bankrupt and his wife, and was founded upon no other consideration, as between grantor and grantee, than the purchase money, so paid by the bankrupt, and was fraudulent, as against the plaintiffs in the

suit, as his creditors; that, on such conveyance, the legal title, in fee simple, to the house and lot, vested in the wife of the bankrupt and was still in her, and a trust resulted in favor of said plaintiffs, as creditors of her husband, to an extent sufficient to satisfy their demands, being the amount of the said two judgments and interest; and that Sondheim was insolvent and had been so since prior to the purchase of the house and lot. The prayer of the complaint was for judgment that the trust might be established and declared, that the plaintiffs might be entitled in equity to enforce the trust, that the wife of the bankrupt might be declared to be the trustee thereof, and that, unless she should pay to the plaintiffs the amount upon their judgments, with interest, the house and lot might be sold by a receiver to be appointed by the court, and that out of the proceeds the judgments and interest might be paid. On the 13th of February, 1868, and before the said suit was commenced, the bankrupt filed his voluntary petition in bankruptcy. The creditors above named proved their said debts in the bankruptcy proceedings. On the 10th of April, 1868, this court made an order staying all proceedings in the said action until the question of the discharge of the petitioner in bankruptcy should be determined by this court. The creditors now applied to the court for an order vacating and setting aside such order of stay.

A. R. Dyett, for the creditors.

Benedict & Boardman, for the bankrupt.

BLATCHFORD, District Judge. The order of stay was made under that part of section twenty-one of the bankruptcy act which provides that "no creditor proving his debt or claim shall be allowed to maintain any suit at law or in equity therefor against the bankrupt, but shall be deemed to have waived all right of action and suit against the bankrupt, and all proceedings already commenced, or 250 unsatisfied judgments already obtained thereon, shall be deemed

to be discharged and surrendered thereby; * * * and any such suit or proceeding shall, upon the application of the bankrupt, be stayed, to await the determination of the court in bankruptcy on the question of the discharge." The action in question, so far as it concerns the bankrupt as a defendant in it, is a suit for the debts set forth in the complaint, a suit to collect such debts, and the creditors, by proving such debts in the bankruptcy, waived all right of action thereon against the bankrupt, and the judgments, so far as they were judgments against the bankrupt, were thereby discharged and surrendered. This view applies, whether the action be regarded as founded on the original indebtedness of on the judgments. The order of stay was, therefore, proper, as respects the bankrupt. It is urged, however, that the suit ought to be allowed to proceed against the wife, as a suit to have the debts paid out of real estate of which the legal title is in the wife, and to enforce a trust created by the statute law of New York, in favor of the creditors, it being provided thereby (1 Rev. St. 728, §§ 51, 52), that "where a grant for a valuable consideration shall be made to one person, and the consideration therefor shall be paid by another, no use or trust shall result in favor of the person by whom such payment shall be made, but the title shall vest in the person named as the alienee in such conveyance," subject only to the provision, that "every such conveyance shall be presumed fraudulent as against the creditors at the time of the person paying the consideration, and, where a fraudulent intent is not disproved, a trust shall result in favor of such creditors, to the extent that may be necessary to satisfy their just demands." It is claimed, that the real estate in question was, therefore, never the property of the bankrupt, and could not pass to his assignee in bankruptcy; and that it does not pass to such assignee under section fourteen of the act, as being "property conveyed by the bankrupt in fraud of

his creditors," because it never was conveyed by the bankrupt. This view overlooks the true character of the suit brought by the creditors in the state court. Their complaint shows that the bankrupt took his own money and made the purchase of the house and lot; that, on such purchase, it was conveyed by the vendors to the bankrupt's wife; that the purchase money so paid by the bankrupt was more than enough to pay the judgments; that the transaction was fraudulent as against the creditors; and that a trust resulted in favor of the creditors, to an extent sufficient to satisfy their demands. This trust they seek to have enforced against the house and lot, as representing the money so fraudulently applied by the bankrupt. The fraud, and the only fraud, committed by the bankrupt was in taking his own money and using it in this way. Therefore, on the case set up by the creditors in their complaint, the money so used and applied by the bankrupt, as now represented by the house and lot, is "property conveyed by the bankrupt in fraud of his creditors." As such, it passed, by virtue of section fourteen of the act, to his assignee in bankruptcy, and he can sue for and recover such property. Any equitable right which the creditors had to enforce any trust created by the law of New York in their favor, in respect to such money or its representative, and any equitable right conferred on them by the bringing of their suit, is subordinate to the right and title of the assignee in bankruptcy. His title relates back to the 13th of February, 1868. The suit of the creditors was brought afterwards. The equitable right to enforce the statutory trust is not such a lien or pledge as is saved or protected, as against the assignee, by the provisions of the fourteenth or twentieth or any other section of the act. The motion to vacate the order of stay is denied.

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