

Case No. 17,937.

{5 N. B. R. 421.}<sup>1</sup>

IN RE WOOD.

District Court, W. D. Tennessee.

1871.

BANKRUPTCY—FRAUDULENT TRANSFER.

A transfer which is only the execution of a contract made when there was no circumstance to impeach it as an intended fraud on the bankrupt law, and when the parties were acting in good faith and long before anything occurred to throw a suspicion over the solvency of the debtor, will be protected, and a bill brought by the assignee in bankruptcy to recover personal property conveyed under the above state of facts will be dismissed.

[Cited in *Smith v. Craft* 17 Fed. 706.]

In December, eighteen hundred and sixty-nine, within six, but more than four months prior to the filing of the petition in this case, James P. Wood, the bankrupt, proposed to one Willingham, to whom he owed a note for five thousand dollars, to convey to him certain land in payment of the debt, which proposition Willingham declined. Wood then told him that he could very easily sell the land and would do so to pay that debt if Willingham would take the purchase notes, to be secured by lien on the land in payment, to which Willingham agreed, but not in writing. Wood did afterwards sell the land and took notes for the purchase money for about the amount of the Willingham debt. Before they were delivered, Howell, Wood & Co., an extensive mercantile firm at Memphis, became bankrupt, and it was generally rumored that J. P. Wood was, by their failure, rendered insolvent by reason of his liabilities for that firm, but there was no proof that Willingham knew or had cause to know of these rumors about James P. Wood. He had before that come to Brownsville by appointment, to settle with Wood and take the purchase notes, but owing to sickness of one of the parties the settlement was not made. A few days after the failure of Howell, Wood & Co., James P. Wood and Willingham did settle by the surrender of Wood's note and the transfer to Willingham of the purchase notes for the land, and within four months afterwards James P. Wood became bankrupt. It was in proof that James P. Wood was regarded as solvent, and that at the time of the transfer of the notes it was not positively known in the community, when these transactions took place, to what extent he was involved in the failure of Howell, Wood & Co.; but it was the general belief that he was very largely so involved. The assignee filed a bill in the district court to set aside the transfer of the notes to Willingham and to recover them for the estate.

Smith & Jefferson, for assignee.

Estes & Jackson, for Willingham.

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TRIGG, District Judge, held that the transfer was not fraudulent under the bankrupt act in the above state of facts. He held that the transfer was only the execution of a contract made when there was no circumstance to impeach it as an intended fraud on the act, and when it was conceded the parties were acting in good faith, and long before the failure of Howell, Wood & Co. had thrown a suspicion over the solvency of James P. Wood; that it was not necessary that the contract then made should have been in writing, nor was it necessary that the notes should have been transferred to entitle Willingham to them, or to make the contract binding on Wood. In delivering the notes after he became insolvent he was only doing what he was bound by his previous agreement to do, and in the absence of all actual or intentional fraud in such delivery, it was the completion of a contract valid in itself and made in good faith before the insolvency, and the bill was dismissed, the assignee taking an appeal.

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