

BRECHER, ASSIGNEE, *v.* FOX AND ANOTHER.

*Circuit Court, D. Minnesota.*

February, 1880.

BANKRUPTCY—PARTNERSHIP—MISAPPROPRIATION  
BY MEMBER OF INSOLVENT FIRM OF  
PARTNERSHIP ASSETS.

Final hearing upon pleadings and proofs in suit in equity.

*Rogers & Rogers*, for complainant.

*Amos Cogswell*, for defendant Emeline Fox.

NELSON, J. The complainant, who is assignee in bankruptcy of Melvin & Fox, brought this suit against J. R. Fox, one of the bankrupts, and Emeline Fox, his wife. The prayer of the bill is, in substance, that the sum of \$624 be declared to be a specific lien and charge upon certain property, to-wit, lot seventeen, (17,) in block number seventeen, (17,) in the city of Owatonna, in this district, and that the same be sold under the directions of this court, and out of the proceeds the said sum be paid to the assignee, and for general relief. J. R. Fox and William S. Melvin were adjudged bankrupts on February 20, 1878, and the complainant was appointed assignee April 1, 1878, and duly qualified. It is clearly proved or admitted that on January 22, 1878, J. R. Fox, being at that time insolvent, paid out of his estate, or his interest in the assets of the firm of Melvin & Fox, which had come to him from the sale of firm property, without liquidating the firm indebtedness, a debt secured by mortgage upon the property above described, owned by his wife, the defendant Emeline Fox, and the mortgage was then canceled of record, and the title to the property now remains in her.

The answer avers that the mortgage debt was paid by Fox in good faith.

The only point in controversy is, could J. R. Fox rightfully use the proceeds of the firm property which had been assigned to him on a division, with the consent of his partner, for the purpose of paying this debt and discharging the lien upon his wife's property, while firm indebtedness to a large amount existed at the time, and the firm, and the individual members thereof, were insolvent? The facts bring this fairly 274 within the adjudicated cases, and the assignee is entitled to the sum claimed, as misappropriated. 16 B. R. 425; Id. 181; 5 Otto, 3; 7 Otto, 304.

A decree will be entered as prayed for, unless within 30 days the defendants, or either of them, pay over \$624 to assignee. The costs will be divided.

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