

New York, 10 Johns. 63; *Bank of Commerce v. Russel*, 2 Dill. 215; *Re Coan Manuf'g Co.* 12 N. B. R. 203; *Re Janeway*, 4 N. B. R. 100.

In Story, Eq. Jur. § 1259, the doctrine is stated thus:

“The right to follow a trust fund ceases when the means of ascertainment fail, which, of course, is the case when the subject-matter is turned into money and mixed and confounded in a general mass of property of the same description.”

On the morning of the day when the defendant bank received the proceeds of complainant's draft it had cash on hand of about \$40,000. It received during the day about \$28,000 from depositors, and it paid out \$61,000. Every dollar that was received from depositors on that day was as fraudulently taken from them as the complainant's money was from it. Each depositor has, at law, an equal right with the complainant to insist upon the repayment of the money that belongs to him; and the same right would exist in equity, except for the existence of a trust relation between the complainant and the defendant bank, which is more theoretical than substantial.

The bill is dismissed.

HAGGART v. RANGER.*

(Circuit Court, N. D. Texas. December, 1882.)

SALE UNDER DEED OF TRUST.

The mere fact that a person who executed a deed of trust when sane, afterwards became of unsound mind, prior to and at the time the sale was made, under and according to such deed of trust, is no ground for setting aside such sale, no element of fraud being presented in the bill, and the inadequacy of the price realized not appearing to have resulted from any improper act of the trustee or of the *cestui que trust*.

In Equity. On demurrer.

The bill in this case charges that on the twenty-eighth of December, 1874, the complainant executed and delivered to the defendant his promissory note for the sum of \$3,522, due June 1, 1875, and on the same day he executed and delivered to the defendant a deed of trust, conveying to Thomas M. Jack and Marcus F. Mott, as trustees, 44 sections (28,160 acres) of land, in Shackelford, Callahan, Stephens, Palo Pinto, Jack, and Knox counties, to secure the payment of said note; that the said trustees, Jack and Mott, acting under said con-

*Reported by Joseph P. Hornor, Esq., of the New Orleans bar.

veyance to them, sold all of the said lands on the twenty-ninth of March, 1879, and the defendant (being still the holder of the note) became the purchaser of all the lands at about the price of 10 cents per acre, and the lands were conveyed to him by said trustees, on the second of April, 1879.

The bill charges, further, that for eight months before the date of said sale, and for many months thereafter, the complainant was affected with unsoundness of mind, to such an extent as incapacitated him for attending to business, and rendered him incompetent to make contracts, or to take any care of his business affairs; that this fact was well known to the defendant and to said trustees at the time of the making of said sale; that at that time the lands were worth two dollars per acre, on a general average; and that the defendant had said sale made that he might absorb all of said mortgaged property in the satisfaction of his debt, which, the bill charges, he could not have done, as the defendant well knew, but for the fact that complainant was rendered helpless by reason of his then existing unsoundness of mind. Wherefore complainant asks to be relieved by having said sale set aside, upon such terms as the court may deem equitable, and as shall adequately meet the claims of defendant upon complainant, growing out of said transactions.

To this bill defendant interposes a general demurrer, that it presents no ground for granting the relief asked; and special demurrer, that it does not show that complainant was of unsound mind at the time he executed and delivered said note and deed of trust.

Sawnie Robertson, C. G. Payne, H. Barksdale, and D. A. Williams, for complainant.

Z. Hunt and Abner S. Lathrop, for defendant.

McCORMICK, J. We think the demurrer well taken. The power to sell the lands given in the deed of trust mentioned is certainly such a power as would be held at common law to have coupled with it an interest in the lands mentioned in the power, and would authorize its execution even after the death of the donor of the power. In this state it is held that such a power cannot be executed after the death of the donor, but this rule here is based on the Texas statutes regulating the administration of the estates of deceased persons. These statutes give priority to funeral expenses, expenses of last sickness, allowances to the family, etc., over all other indebtedness, (except, perhaps, for purchase money,) and they make special provision for the execution of just such contracts and liens as this by administration. *Robertson v. Paul*, 16 Tex. 472.

In the case just cited, the power under consideration was precisely similar to the one given Jack and Mott, under consideration by us in this case, and Judge WHEELER, in his opinion in that case, clearly indicates his opinion that in Texas, the common law being the rule of decision here, such a power could be executed after the death of the grantor, but for its contravening our system of administration of decedents' estates.

A careful examination of the Texas statutes does not disclose any such provisions in reference to insane persons, or in regard to the management of the estates of persons of unsound mind, as those provisions of the law regulating the administration of the estate of deceased persons, which have been held in *Robinson v. Paul, supra*, and in subsequent cases in the Texas Reports, to cause the power to determine upon the death of the grantor. It is not necessary for us to consider what might have been the effect upon this power had the complainant been found insane by proper inquest, and guardianship of his estate granted by the proper court. We are clearly of opinion that the condition of complainant presented by the bill was not such as arrested or suspended the power granted by him in the deed of trust. No element of fraud is presented in the bill. The mere fact of making the sale while complainant was in the condition alleged, with knowledge thereof on the part of the defendant and of the trustees, is all that is charged in that direction.

The inadequacy of price complained of does not appear to have resulted from any improper act of defendant. From all that appears, the sale was made precisely as the complainant had provided it should be made, and the defendant became the purchaser because he was willing to give more for the land, and at the sale offered more for the land than any one else offered, and no reason suggests itself to us for setting aside the sale on that ground.

The demurrer is sustained.

PARDEE, J., concurs.

DAHLMAN v. JACOBS and others.*

(Circuit Court, E. D. Missouri. March 29, 1883.)

1. EQUITY—CREDITOR'S BILL.

A creditor at large, who has not established his demand at law, cannot maintain a suit in equity, either to set aside a conveyance executed by an insolvent debtor, or obtain a decree that such conveyance shall stand for a general assignment, under the state statutes, for the benefit of all such debtor's creditors.

2. SAME—REMEDY AT LAW.

A court of equity has no jurisdiction, even where the demand has been duly established, if the plaintiff can obtain a full, complete, and adequate remedy at law.

In Equity. Demurrer to bill.

This is a suit brought by Max Dahlman against Joseph M. Hayes, Amelia Jacobs, and Henry Jacobs, her husband, to have a certain instrument executed by the two last-named defendants held and decreed to be and operate as a deed of assignment for the benefit of all the creditors of said Amelia Jacobs, under the laws of the state of Missouri, and for other relief. The bill states that said instrument purports to be a mortgage of all the separate estate and property of said Amelia Jacobs, and to have been executed for the purpose of securing a debt due from her to Joseph M. Hayes, the mortgagee, and alleges that at the time said instrument was executed, Mrs. Jacobs was carrying on business in St. Louis under the name of A. Jacobs, and had a separate estate; that she was insolvent, and at the time said instrument was executed was indebted to other creditors besides said Hayes, among whom was the defendant, to whom she owed the sum of \$1,442.82, as appeared by an itemized account therewith filed. The only question decided by the court was as to its jurisdiction.

Patrick & Frank, for plaintiff.

D. Goldsmiths, for defendants.

TREAT, J. A general demurrer has been interposed, which involves two questions: *First*, whether a creditor at large can maintain the bill, either to set aside defendants' conveyance or to decree that it shall stand for a general assignment for the benefit of all the creditors; *second*, if the plaintiff has the proper standing, whether the conveyance in question falls within the provisions of the Missouri statute as to assignments.

The counsel have exercised extraordinary diligence in presenting and collating cases on the second point. The questions on that point,

*Reported by B. F. Rex, Esq., of the St. Louis bar.