

KERBS *v.* EWING.

Circuit Court, W. D. Missouri, W. D. 1884.

ASSIGNMENT FOR BENEFIT OF
CREDITORS—MISSOURI STATUTE—DEED OF
TRUST FOR BENEFIT OF CERTAIN CREDITORS.

No matter what the form of the instrument, where a debtor in Missouri, being insolvent, conveys all of his property, to a third party to pay one or more creditors, to the exclusion of others, such a conveyance will be construed to be an assignment for the benefit of all his creditors; the preference being in contravention of the assignment laws of the state.

Demurrer to Bill of Complaint.

Scott & Taylor, for plaintiffs.

Karnes & Ess and *Adams & Stuebenrauch*, for defendants.

MCCRARY, J. This case is not different in principle from the case of *Martin v. Hausman*, 14 FED. REP. 160. It is true that in *Martin v. Hausman* the technical deed of trust, which was construed to be an assignment for the benefit of creditors, was defective as a deed of trust, in having no defeasance clause attached thereto. In this case, the instrument is a deed of trust in proper form. This, however, can make no difference. No matter what the form of the instrument, where ⁶⁹⁴ a debtor, being insolvent, conveys all his property to a third party to pay one or more creditors, to the exclusion of others, such a conveyance will be construed to be an assignment for the benefit of all the creditors; the preference being in contravention of the assignment laws of this state. Demurrer overruled.

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