leads me to the conclusion that on November 11, 1871, William M. Lloyd was entirely solvent.

In the spring of 1872 William M. Lloyd began the erection of a dwelling-house upon John's land, the 26-acre tract. His original purpose was to build at a cost not exceeding $10,000; but his son-in-law, Mr. Hutchison, persuaded him to change his purpose and employ an architect, who prepared a plan. The limit of cost which Mr. Lloyd then fixed was $15,000. Mr. Hutchison took charge of the erection of the building, and Mr. Lloyd gave little personal attention to the matter. The house proved to be a much more costly affair than he anticipated. It is described in the bill as "a large stone house, constructed in the most elegant and expensive architectural style, and finished in the most elegant, rich, extravagant, and expensive manner throughout the inner part of the building." The cost, including a stable, ran up to the sum of $49,770.59. When Mr. Lloyd's suspension occurred, in October, 1873, the house was well on towards completion. The materials necessary to complete it, although paid for afterwards, had already been contracted for, and were delivered, or ready for delivery, and the wood worked out. Mr. Lloyd got himself released from contracts for expensive gas-fixtures, and, so far as he could, from contracts for mantels. Upon his suspension the work was stopped, but was resumed in about two months; and in the middle of February, 1874, Maxwell Kinkead, Mr. Lloyd's son-in-law, moved into the house; and in the spring of 1874 William M. Lloyd and his wife went there to board with Mr. Kinkead.

I am satisfied from the evidence that William M. Lloyd entertained no purpose of building on John's land when the deed of November 11, 1871, was executed. The project was of a later conception. I am also convinced by the proofs that he put these improvements on John's land without his request and without consulting him. There was no agreement, arrangement, or understanding between the father and son in respect to them. It was a purely voluntary act on the part of William M. Lloyd. He himself entertained the purpose of making an exchange with John, and of giving him for his land the old homestead property, consisting of 19 acres of land; and, while the stone building was in progress, John was told by members of the family that his father entertained such purpose. In his testimony John says: "I suppose I would have exchanged if he had wanted me to." While these improvements were going on,—until his suspension, in October, 1873,—William M. Lloyd's credit continued unimpaired, and he was entirely free from financial embarrassment. I have no doubt both he and John speak the truth when they respectively testify that they then believed he was worth a half a million of dollars. The belief thus entertained by them must be taken into account in passing judgment on their conduct. It must be remembered, too, that the father and son had the utmost confidence in each other, and were not dealing as strangers would. The father assumed that the son would

make the exchange he himself had in contemplation, and John, with filial respect, acquiesced without question in what his father was doing. Their testimony explanatory of these transactions, and all the attending circumstances, lead me to reject the theory of a fraudulent collusion between them. To my mind the very character of these improvements repels the idea that William M. Lloyd intended to withdraw from his creditors the money invested therein. Had he meditated such a fraud it would have taken any other shape than this unproductive and wasteful expenditure of money; for that such it was, in that locality, the evidence plainly indicates. Thus, John Crown, the plaintiffs' witness, when asked by them, "What is a fair rental value of the stone-house property?" answered: "Forty or fifty dollars per month, if a man could be found who had sufficient means to pay it. If vacant to-morrow, it might stand idle a long time."

Without further elaboration, I content myself with saying that the conclusion to which the evidence has brought me is that in the matter of the improvements put upon John's land there was no fraudulent conspiracy between him and his father, as charged in the bill, nor any collusion or understanding whatever between them; and that these improvements were made by William M. Lloyd of his own will, without fraudulent intent towards his creditors, or any wrongful purpose, but innocently, under the belief that he was possessed of great wealth, and in the expectation that upon his request John would make an exchange of properties.

The object sought by the plaintiffs throughout this litigation has been the overthrow of the deed of November 11, 1871, as a voluntary and fraudulent conveyance. The specific prayer of the bill is for such relief, and to that end the evidence was directed, as was the argument of counsel. It was, however, suggested at the hearing that should John's title to the land prevail, still the plaintiff should have a decree for the value of the improvements put thereon by William M. Lloyd; and this is repeated in the brief of counsel, and some authorities cited to support that view. This subject has received from me the most serious consideration, with a result unfavorable to the plaintiffs.

In the first place, it is plain that the bill was not framed with a view to any such relief. The case which it presents rests exclusively upon the fraudulent character of the deed and the consequent nullity of John's title. It has no other basis. The specific prayers of the bill are for a decree declaring the invalidity of the deed, decreeing a conveyance, and for an account of rents. True, there is the prayer for general relief. But the special relief prayed at the bar must essentially depend upon the proper frame and structure of the bill. Story, Eq. Pl. § 42. "In order to entitle a plaintiff to a decree under the general prayer different from that specifically prayed, the allegations relied upon must not only be such as to afford a ground for the relief sought, but they must have been introduced into the bill

for the purpose of showing a claim to relief, and not for the mere purpose of corroborating the plaintiff's right to the specific relief prayed, otherwise the court would take the defendant by surprise, which is contrary to its principles." 1 Daniel, Ch. Pr. 386. Thus, where a bill was filed for the specific execution of a contract for the purchase of land, alleged to be evidenced by a written memorandum, and that allegation was not sustained by the proof, it was held that the plaintiff could not, under the prayer for general relief, obtain compensation for improvements upon the land. *Smith* v. *Smith*, 1 Ired. Eq. 83. And so, here, it seems to me that under the frame and structure of the bill compensation is not decreeable. *Herring* v. *Richards*, 1 McCrary, 577; S. C. 3 FED. REP. 439.

Again, upon the proofs, no just decree for the value of the improvements could be made. Their cost would by no means be the true standard. There can be no doubt that these large expenditures added no corresponding increase to the value of the land, but in a great degree were sunk. It is probable that a modest mansion, costing $8,000 or $10,000, would have added more value to the land than this pretentious structure.

But waiving these considerations, and assuming the question as properly arising upon the pleadings and proofs, upon what just principle could a decree be made against John Lloyd or his land for the value of these improvements? Cases there are in which the owner of land, standing by and permitting another to expend money in improving it, has, in equity, been deemed a delinquent, and been compelled to pay for the improvement. "But in these cases there is always some ingredient which would make it a fraud in the owner of the land to insist on his legal right." *Crest* v. *Jack*, 3 Watts, 239. What such ingredient is there here? John did not solicit his father to make these improvements, nor encourage him to do so, nor did William M. Lloyd act in ignorance in respect to the title, nor was he misled. If John had refused to make the exchange of properties which his father had had in contemplation, there might possibly be some ground for raising an equity against him. But John was never asked to make the exchange; nor do the plaintiffs propose anything of that kind. Indeed, it would seem such exchange would have secured no advantage to William M. Lloyd, or his estate in bankruptcy, for the plaintiffs' counsel in their printed brief, at page 28, say: "The old mansion house, with the nineteen acres surrounding it, is nigher the center of the city and quite as valuable as the new stone house and the 26 acres."

Says Chief Justice GIBSON in *McClure* v. *McClure*, 1 Pa. St. 378: "Expenditure in improvements without stipulation or request is gratuitious, and, like any other unsought service, not the subject of compensation by bill or action." And in *Rush* v. *Vought*, 55 Pa. St. 438, 444, the court declare: "Equity will enforce a trust or a contract, but cannot create a title where none exists. * * * Creditors can

work out equities only through the rights of the parties where there is no fraud."

Our case is one of gratuitous expenditures innocently made. The cases which the plaintiffs' counsel cite are very different. In *Athey* v. *Knotts*, 6 B. Mon. 29, there was not only an ingredient of bad faith, but the interest which the creditors of the fraudulent insolvent reached, was his own portion of the rents. In *Divine* v. *Steele*, 10 B. Mon. 323, there was a request to make the improvement, and the insolvent himself had an enforceable claim. In *Lynde* v. *McGregor*, 13 Allen, 182, the wife had executed a mortgage of her land for three times the sum loaned, and the improvements were made by collusion between the husband and the mortgagee to defraud the creditors of the former, who, as I apprehend the case, sought to reach the improvements through the mortgage. At any rate, there was the element of actual fraud; and, if the wife was otherwise innocent, she had placed in the hands of the guilty conspirators a mortgage for a false amount.

The English authorities recognize this distinction: if a man, who afterwards becomes bankrupt, has advanced money to his son, in such a shape, or which has been applied to such purposes, that an *existing lien* in respect to that specific money so advanced can be made out, that *lien* will pass to the assignee in bankruptcy; but where the money has been advanced and disposed of in such a way as to raise no *lien*, then it cannot be reclaimed by the assignee. *Fryer* v. *Flood*, 1 Brown, Ch. 161; *Ex parte Shorland*, 7 Ves. 88, note, (Sum. Ed.)

In *Campion* v. *Cotton*, 17 Ves. 264, on a creditors' bill to set aside a settlement of land on a wife, where there had been subsequent voluntary expenditures by the husband in improvement by building and enfranchising copy-holds, the master of the rolls, Sir WILLIAM GRANT, after showing there was no ground to avoid the settlement, said:

"As to the *additional value* that the land may have received by building, subsequent to the marriage, or by enfranchising copy-holds, I do not see how it is possible to make a mere voluntary expenditure by him upon her estate a ground of charge against her or her estate."

No more can I see how it is possible justly to charge John Lloyd or his land for purely voluntary expenditures by his father, innocently made by him, and innocently permitted by the son. The heir, who after descent cast takes the accruing rents, is not accountable therefor to the creditors of his insolvent ancestor. *McCoy* v. *Scott*, 2 Rawle, 222. And in *Fripp* v. *Talbird*, 1 Hill, Eq. (S. C.) 142, where a voluntary deed was set aside as void against creditors, a decree for an account of profits enjoyed was refused; the court well saying: "It would operate as a hardship, approaching a fraud, to make one account for profits which he may have expended in the just confidence of their being his own." It would be a still harder thing to compel a son to pay for unsought expenditures gratuitously made by his father under the circumstances which existed here.

This opinion has so grown on my hands, in spite of all efforts to the contrary, that I must restrict myself to a mere statement of the facts, with my conclusions thereon, as respects the other subjects of controversy. The bill seeks to set aside, as fraudulent as against creditors, other deeds for other real estate,—three distinct properties. One of these is the Endress property. On May 8, 1871, Zachariah Endress conveyed a lot of ground, containing six acres, to William M. Lloyd for $10,500, of which $2,500 were paid, and notes given for the balance of purchase money. After Mr. Lloyd's suspension, Endress agreed to extend the time of payment upon John Lloyd's indorsing new notes, which was done. Afterwards, the property having greatly depreciated, William M. Lloyd proposed to Endress that he should take back the property and surrender the notes, which Endress declined to do. William M. Lloyd then sold and conveyed the property to John Lloyd for $8,000, John giving his notes therefor, bearing interest. Endress took these notes and surrendered William M. Lloyd's. At this time the property was not worth $8,000. Still later, John Lloyd's bargain being likely to prove a losing one, he prevailed on Endress to throw off $3,000, and take in cash $1,000 and notes of himself and John F. Bowman for the balance. These last-mentioned notes John Lloyd and Bowman paid with their own moneys. I discover no fraud in the affair. It is said the land has appreciated in value. But we must regard the state of things at the date of the transaction. If this had been a matter between strangers no one would have suspected fraud. But business dealings between parents and children, or near relatives, are to be treated as are the transactions of other people; and if the *bona fides* thereof is attacked, the fraud alleged must be proved. *Reehling* v. *Byers*, 94 Pa. St. 316.

The bill charges that John Cramer conveyed by deed four lots of ground in Altoona to William M. Lloyd for the consideration of $8,000, and that afterwards, on June 5, 1874, William M. Lloyd, John Lloyd, and John F. Bowman, conspiring together to defraud the creditors of the former, destroyed that deed, and procured a new one to be made from Cramer to John Lloyd, without any new or other consideration being made, and this for the purpose of fraudulently withdrawing the property from the reach of the said creditors. I find the facts to be these: By articles of agreement, dated April 22, 1873, John Cramer sold these lots to William M. Lloyd for $8,000, and on the agreement a payment of $2,667 is indorsed. In the spring of 1874 Cramer tendered a deed to Mr. Lloyd, and demanded payment of the balance of purchase money. He was unable to pay, and so informed Cramer. Mr. Tierney, a member of the bar, who was present at the tender on behalf of Cramer, testifies: "It was understood between Cramer and Mr. Lloyd, at the time, that, owing to his inability to pay, the articles of agreement or bargain was canceled." Cramer then sought a purchaser, and, failing to sell to Mr. C. Hauser, he offered the property

to John F. Bowman, who agreed to buy if John Lloyd would join him. This, John consented to do; and Cramer executed a deed to John Lloyd on June 5, 1874, for the price of $4,195, which was the then full value of the property, and, indeed, rather more than it was worth. It had greatly depreciated in value after the panic of 1873. John Lloyd and Bowman gave Cramer their notes for the price, and afterwards paid them with their own funds. Under the evidence, it is perfectly clear that the agreement of sale between Cramer and William M. Lloyd was rescinded by them *bona fide*. It appears that William M. Lloyd collected the rents until the fall of 1875, but it is shown that it was because Mr. Bowman requested him to do so, and pay the taxes. The charges in the bill in respect to this property are not sustained by the proofs. There is nothing shown to impeach the integrity of the transaction.

The remaining subject-matter of the bill is what is known as "The Unity Township Coal Property," situated in Westmoreland county, Pennsylvania, an undivided one-third of which William M. Lloyd sold and conveyed to John Lloyd on June 29, 1875, at the same time leasing to him another undivided third part. This coal property was purchased in 1872 by Lloyd, Huff & Co., a firm composed of William M. Lloyd and George J. Huff, and was paid for with the partnership funds, although the deed was made to Lloyd and Huff as tenants in common. On January 1, 1873, Lloyd, Huff & Watt succeeded the firm of Lloyd, Huff & Co., the only change being that of name and the introduction into the firm of William H. Watt. The new firm took the assets and assumed the debts of the old firm and continued the business. On June 10, 1875, Huff conveyed his interest in this coal property to William M. Lloyd. On June 29, 1875, William M. Lloyd conveyed an undivided one-third interest in the property to Watt, and at the same time made the above-recited conveyance and lease to John Lloyd. Simultaneously, John Lloyd and William H. Watt formed a copartnership, by articles of agreement, for the purpose of opening mines upon and mining coal from said property. William M. Lloyd, by a subjoined agreement under seal, consented to the said articles of copartnership. By the terms thereof, the profits due to the one-third interest of William H. Watt and due to the one-third interest of William M. Lloyd, leased to John Lloyd, were appropriated to the payment of the debts of Lloyd, Huff & Watt, and said two-third parts of the coal property were subjected to the payment of the debts of said firm, and were put into the new partnership impressed with the lien thereof.

For the undivided one-third interest conveyed to John Lloyd, he gave his promissory notes, aggregating $10,000: one for $2,500, payable in two years; and the others for $1,250, each payable in four, five, six, seven, and eight years, without interest. These notes William M. Lloyd immediately indorsed over to Lloyd, Huff & Watt, and delivered them to Mr. Watt, who then represented the creditors

of that firm, which had been granted an extension, and was in the hands of a committee of creditors. As the notes of John Lloyd matured, they were paid by him, and the proceeds have gone to the creditors of Lloyd, Huff & Watt.

The enterprise into which John Lloyd and William H. Watt embarked, involved the opening up of coal mines at a large expenditure of money, and they did thus expend from $10,000 to $12,000. Before the conveyance by William M. Lloyd to John Lloyd of the third interest in this property, some of the creditors of Lloyd, Huff & Watt were consulted by Mr. Watt, and they approved the sale. The price which John Lloyd gave, as represented by his notes, under the circumstances, was fair, and all the property was worth. The lease to John Lloyd, which was for 12 years, stipulated that no royalty should be payable to William M. Lloyd until the debts of Lloyd, Huff & Watt were paid. This disposition of the property was in the interest of the creditors of that firm, none of whom have complained of it. Although the title of the property was not conveyed to the partners as such, or for the use of the firm of Lloyd, Huff & Co., it was bought with the money of that firm. And while William M. Lloyd was not bound to devote it to the firm debts, still it was a proper and strictly equitable thing to do. Under all the circumstances, I fail to discover anything fraudulent in the transaction.

Let a decree be drawn dismissing the bill, with costs.

WABASH, ST. L. & P. RY. CO. *v.* CENTRAL TRUST CO. OF NEW YORK and others.[1]

(*Circuit Court, E. D. Missouri.* October 2, 1884.)

1. CONTRACTS OF RECEIVERS.
   Where a railroad company contracted for rails, but became insolvent and passed into the hands of receivers, before they were delivered, and in order to avoid litigation, and with the expectation of earning freight by transporting ores for the vendor, the receivers of the road agreed to receive the rails at the contract price and pay for them at a specified time, though the contract price was more than the rails could then have been purchased in the market for, and the rails were delivered; but upon its thereafter appearing that there was no hope of earning anything in transporting freight for the vendor, said receivers declined to pay the agreed price, *held* that they were bound to comply with their obligation.
2. SAME.
   Semble that a court should not authorize or direct its receivers to enter into obligations which the necessities of the case do not absolutely require, but that when entered into with authority their obligations should be strictly fulfilled.

In Equity.

[1] Reported by Benj. F. Rex, Esq., of the St. Louis bar.