

FARWELL AND OTHERS V. KERR AND OTHERS.

Circuit Court, S. D. Iowa.

June 26, 1886.

EQUITY—CREDITORS' BILL—COSTS—HUSBAND
AND WIFE—CONVEYANCE OF HOMESTEAD
PROPERTY.

Where a wife joined her husband in the mortgage of store property, to one-twentieth of which she held the legal and equitable title, but previously required him to convey to herself several pieces of property, one of which was the west half of the block occupied by them as a homestead, as consideration therefor and on the ground that her husband received from her father after her marriage considerable money used in the building of the store, and the judgment creditors filed a bill as complainants to set aside said conveyance of the husband to the wife, *held* that, under the peculiar circumstances of this case, the conveyance be sustained as to the homestead, and be decreed void as to the remainder of the property, that each party pay the costs of its own testimony, and the other costs of the case go against the defendants.

Creditors' Bill.

Cummins & Wright, for complainants.

L. Kinkead, for defendants.

BREWER, J. This is a bill filed by complainants, judgment creditors of A. J. Kerr, to set aside a conveyance made by him to his wife, Julia Kerr, and to subject the property thus conveyed to the payment of their judgments. The law governing transactions of this kind is well settled in the federal courts. *Humes v. Scruggs*, 94 U. S. 22; *Seitz v. Mitchell*, Id. 580. The testimony is voluminous, and in many respects indefinite and unsatisfactory. Comment in detail would be useless, and I content myself with a statement of my conclusions.

The judgment debtor had been a merchant. He became insolvent, and transferred all his property by mortgage or conveyance. He mortgaged the lot upon which his store building was situated to a bank to

secure a debt to it. His wife joined in this mortgage. She held the legal and equitable title to one-twentieth of this property. Before she would execute this mortgage she required a conveyance of other property—that now in controversy—to herself. A part of the property thus conveyed was the W. $\frac{1}{2}$ of block 13, Walter & Roach's addition to Knoxville. This entire block was occupied by Mr. and Mrs. Kerr as their homestead. Whether the entire block was exempt is a question under the evidence. The validity of this conveyance is claimed on the ground that by the mortgage she parted with her own property; that in their early married life her husband received from her father considerable money and property; and that he used it in the building of the store on the lot mortgaged to the bank under an arrangement with her that when the building was completed he would convey an undivided half of the entire property to her. Hence she claims that she was equitably the owner of one-half the store property, and that the value of this was about the same as the value of 346 the property conveyed to her; that her husband received something from her father is clear, but what amount, and under what circumstances, is not satisfactorily disclosed. Neither is the testimony satisfactory as to the alleged agreement about the conveyance of one-half of the store property. The conveyance in controversy, therefore, to the wife, cannot be sustained as a whole. It should be sustained in part, for she unquestionably owned the one-twentieth of the store. Taking that into account, as well as the fact that her husband did receive something from her father, and also considering the doubt as to whether the entire homestead be not exempt, I reach this conclusion: (1) That the conveyance be sustained as to said W. $\frac{1}{2}$ of block 13, the part of the homestead; (2) that it be decreed void as to the remainder of the property; (3)

that each party pay the costs of its own testimony;
(4) that the other costs of the case go against the
defendant.

This volume of American Law was transcribed for use
on the Internet

through a contribution from [Google](#). 