

in five days after the sale, "but the title of the purchaser shall not be affected by any failure on the part of the officer to make the return as aforesaid." Section 5: A form of deed is given which recites the proceedings, and nothing else is required to be recorded. The substitution of the sale and deed for the appraisal and set-off substituted the requirements of the former for those of the latter when the former is used. *U. S. v. Claffin*, 97 U. S. 546.

The notice to the debtor of the sale of real estate is required, "that the owner thereof may have an opportunity to redeem the same." Laws 1884, No. 139, § 3. It is no part of the levy or sale, and is somewhat like the demand required of the sum to be levied. *Rev. Laws*, § 1547. The failure to make such demand does not invalidate the levy. *Collins v. Perkins*, 31 Vt. 624. The notice is, however, shown to have been in fact given. The advertisement is shown in the bill, and shown by proof to have been in fact published as required.

The principal criticism upon that is that it relates to several parcels in each of several towns, and does not name time and place as to each parcel. But it describes each parcel in each town, by towns, and specifies as to those in each town that the sale will be at an hour named, on the premises. This expression is used distributively, and applies to each of the premises. The advertisement appears to have been fully understood by all concerned, as it was followed in making the sale, and to have been sufficient. As the title would not be affected "by any failure" to make return, the failure to make full return in these respects would not affect it.

These proceedings are similar to those of sales of lands for taxes, and such parts of them as are not required to be shown in a particular way may be shown otherwise by any competent evidence. *Chandler v. Caswell*, 17 Vt. 580. And if these are required to be shown by return made at some time as the best evidence, the return has by leave of court been amended according to the facts, which seems to be allowable. *Brainard v. Burton*, 5 Vt. 97; *Bent v. Bent*, 43 Vt. 42. Deeds not criticised were given by the marshal to the purchaser and recorded, which, according to the statute, appear to give the purchaser, the defendant Wellington B. Witters, "all the debtor's title to the lands so sold."

Suggestion is made that the bids are not paid, but that is a matter wholly between the purchaser, creditor, and debtor. The execution is returned satisfied to the amount of the bids, which is sufficient as to all. Bill dismissed, with costs.

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SOWLES et al. v. RUGG et al.

(Circuit Court, D. Vermont. January 11, 1893.)

#### QUIETING TITLE—WHEN SUIT LIES.

One who has purchased land at execution sale under a void judgment obtained by him collusively with the defendant for the purpose of defeating the rights of a prior attaching creditor, cannot, by joining with

him defendant's husband, subject to whose alleged marital rights the sale was made, entitle himself to maintain a bill to remove the cloud created by the sale under such prior attachment.

In Equity. Suit by Susan B. Sowles and Edward A. Sowles against Benjamin F. Rugg and Chester W. Witters, receiver, etc., to remove a cloud on complainants' title. Bill dismissed.

Edward A. Sowles, for orators.

Chester W. Witters and Nathan N. Post, for defendants.

WHEELER, District Judge. The oratrix is a daughter, and the orator the husband, of Margaret B. Sowles, and the defendant Witters is receiver of the First National Bank of St. Albans.

He attached her real estate, and the oratrix attached the same. It was levied upon, and sold on his execution to the defendant Rugg, but not within five months of the judgment; and afterwards levied upon and sold, subject to the marital rights of the husband, to the oratrix, on her execution within five months of that judgment. This suit is brought to remove the cloud of his levy from the title of the oratrix and orator, and to prevent Rugg from interfering with their possession.

It has been heard with Susan B. Sowles vs. Wellington B. Witters and Chester W. Witters, receiver, upon like answer and the same evidence. See 55 Fed. Rep. 159. As it is brought by the oratrix and orator, it can be maintained only upon a joint or common title or right of both. That the judgment and execution of the oratrix are wholly void as to the defendant Witters, receiver, is found and held in this case as in that. The subjection of her levy and sale to the marital rights of the husband would not vary their effect. By the statute under which they were made they would, if valid, "give to the purchaser all the debtor's title to the land so sold." Laws 1884, No. 139, § 2. If the husband had any marital rights that would be left, they would not be included, whether noticed or not; if he had none, all the debtor's title would be conveyed, although treated as subject to them. *Perrin v. Reed*, 35 Vt. 2. If the receiver's levy was valid, the effect would be the same; neither purchaser would have any joint or common right with the husband, and neither could join with him against the other. Much less can the oratrix proceed jointly against the other after her right fails. His right, however, is to the use of the wife's lands; the rents, issues, and products of which have long been exempt from his debts. Rev. Laws, § 2324. But the statute relating to the contracts and liabilities of married women provides that execution may issue against them, and be levied on their "sole and separate goods, chattels, and estate." Laws 1884, No. 140, § 1. When her lands were levied upon and sold they were no longer her lands for him to have the use of. When the marital relation is ended by divorce, this right ceases. *Barber v. Root*, 10 Mass. 260; *Mattocks v. Stearns*, 9 Vt. 326. Whatever ends the wife's estate ends the husband's. Even after he becomes tenant by the curtesy, what would end her estate if she was alive will end his. Execution issues upon the acknowledgment of

a statute, merchant or staple. "If a woman, tenant in tail, acknowledge a statute and marry, and have issue and die, the land may be extended in the hands of her husband, tenant by the curtesy." Bac. Abr. "Curtesy of England, E." "Any circumstance which would have defeated or determined the estate of the wife if living will, of course, put an end to the estate by curtesy." 1 Washb. Real Prop. c. 6, par. 18; 1 Rep. Prop. 35. The husband has an estate in the wife's land which might be attached by his creditors, if not exempt by law, and be conveyed by him, if not prohibited by law. *Hyde v. Barney*, 17 Vt. 280. But it is of uncertain duration, and liable to be defeated by the failure of her estate, as well as by the termination of the marriage relation during the life of both.

The levy of the oratrix seems to be good against all but the receiver, whose right was sought to be avoided, and would terminate the rights of the orator; and both could not proceed together against the defendants after the failure of his rights.

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

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EQUITABLE MORTG. CO. v. LOWRY et al.

(Circuit Court, N. D. Texas. February 4, 1893.)

No. 203.

1. HOMESTEAD—DESIGNATION—CONTIGUOUS TRACTS—INCUMBRANCES.

A husband and wife owned and lived with their family upon, and used as one tract, three tracts of land containing 133, 280, and 5 acres, respectively, all adjoining. The 133-acre and the 5-acre tracts constituted, with a small parcel of the 280 acres, between them a continuous body of land. They also owned a tract of 59.82 acres in the same county, but at a distance of three fourths of a mile from the land on which they lived. The husband made a written designation of the 133-acre, the 5-acre, and 59.82-acre tracts as his homestead; the 280-acre tract being, at the time, under a mortgage. *Held*, that under the Texas statute the designation was effectual as to the 133-acre and the 5-acre tracts, and that a deed of trust thereof was invalid; but that it was ineffectual as to the 59.82 acres, and that a deed of trust thereof was valid.

2. SAME—MORTGAGE—ESTOPPEL BY REPRESENTATIONS.

Representations under oath, made by husband and wife for the purpose of obtaining a loan upon the security of their homestead lands, that the lands are not their homestead, but that other lands therein specified are, do not estop them from claiming their homestead exemption under the Texas statute, such representations being contrary to the visible and actual facts.

3. SAME—COLORABLE TRANSFER TO THIRD PARTY—MORTGAGE—SUBROGATION.

A husband and wife conveyed their homestead to a third party by general warranty deed for an expressed substantial consideration. The grantee borrowed money on the security of the lands. The agent of the lender knew that the conveyance to the borrower was only colorable; that the real interest in the land remained in the grantors, and that they continued to occupy the land as their homestead. The lands were reconveyed, and thereafter the husband and wife, by false representations that the lands were not their homestead, borrowed money upon them, a part of which the lender, at their request, applied in payment of the first loan. *Held* that, although the deed of trust to secure the latter loan was invalid, the lender was entitled to be subrogated to the debt and lien of the first lender, and that the knowledge of the agent of the latter was not imputable