

from these institutions upon an arrangement that would have been at once violative of law, honor, and safe business methods. If Walsh entered into the arrangement alleged, he did a gross wrong to the public, and to the debtors of the trust company, and the complainants, confessedly, have shared in the knowledge of this wrong. It is not an answer to say that they supposed that, out of his great wealth, he could meet the necessities of his obligations without trenching upon the rights of the trust company. They could take that risk, if they saw fit, but, if it fails, cannot throw upon the trust company or the bank the resultant consequences. It is beyond conscientious conception that the great funds deposited in our banking and trust institutions are at the mercy of such arrangements as grasping officials and ambitious adventurers may enter upon. But such would be the real facts if courts, in cases like this, could cancel the supposed assets of these institutions, or arrest their collection, or in any way interfere with the plain legal effect that their face imports. If the complainants have been deceived, and thereby suffer loss, it is because they have embarked their interests upon a chance that the defendant Walsh had no lawful right, as against the trust company or the bank, to hold out. Their rights, whatever they are, remain against Walsh as an individual, and cannot be carried over against the trust company. I can find no way, as between them and the trust company, to give them any substantial relief. It is only just that I should add that the question of the truth of the charges against defendant Walsh has not been considered. Had I entered into that branch of the case, I would have called for affidavits to meet the complainants' case, or have referred the case to a master to direct an inquiry. The case, as disposed of, is upon the assumption of the correctness of the complainants' averments of fact, and not upon proof thereof. Accordingly, the motion for injunction will be overruled, and the present restraining order dissolved.

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BREED v. GLASGOW INV. CO.

(Circuit Court, W. D. Virginia. July 11, 1895.)

CORPORATIONS—MORTGAGES—VIRGINIA STATUTE.

The F. Co., on August 2, 1890, conveyed certain land in Virginia to the P. Co. for a consideration, part of which was paid in cash, and the remainder was to be paid in deferred installments, secured by a deed of trust, which was executed, but not recorded. June 1, 1891, the P. Co. conveyed the same land to the G. Co. by a deed referring to the deed from the F. Co., and reciting an intention to transfer the property subject to all the terms of that deed. The G. Co. also expressly assumed the payment of the unpaid purchase money due the F. Co. Simultaneously, the G. Co. issued its bonds for the amount of such purchase money, payable to the F. Co. or bearer, and secured them by a deed of trust of the land. This deed of trust was recorded on December 30, 1891. At the time of the conveyance to the G. Co., the F. Co. executed a release to the P. Co. of its mortgage, which release was recorded January 4, 1892. On June 27, 1892, the G. Co. was placed in the hands of a receiver appointed in a creditors' suit. A general creditor of the company intervened, claiming that the deed of trust made by the G. Co. to secure the bonds should be decreed

to inure to the benefit of all the creditors of the G. Co. *Held*, that the provisions of section 1149 of the Code of Virginia, relating to liens created by corporations to secure preferences to creditors, did not apply, since the deed of trust was given to secure a debt contracted at the time, within the exception of that statute, and no ground of equity required the court to deprive a vendor of property of the lien created for the purchase money, for the benefit of general creditors.

Letcher & Letcher, for complainant.

M. M. Martin, for defendant.

O. B. Roller & Martz and M. M. Martin, for petitioner.

John Selden, H. O. Claughton, Jas. Bumgardner, Jr., W. E. Craig, and Letcher & Letcher, for demurrant.

PAUL, District Judge. The petitioner, A. F. Smith, files his petition in this cause, alleging that he is a creditor of the defendant company in the sum of \$3,000, for money loaned it on the 26th day of May, 1891, with interest thereon from said date; that, under the provisions of section 1149 of the Code of Virginia (Ed. 1887), a certain deed of trust, made on the 1st day of June, 1891, from the Glasgow Investment Company (hereinafter designated as the Glasgow Company) to S. H. Letcher, trustee, to secure the payment of 90 bonds, of \$1,000 each, payable to the Natural Bridge Forest Company (hereinafter designated as the Forest Company), or bearer, with the coupons thereon, should be held to inure for the benefit, ratably, of all the creditors of said company existing at the time said deed of trust was made. The petition further alleges that at the time of the conveyance of the property involved in this suit, conveyed by the Natural Bridge Park Association (hereinafter designated as the Park Association) to the Glasgow Company, the latter company was insolvent, and that such insolvency was known to H. C. Parsons, the president of the Forest Company, the vendor of the said property to the Park Association; that the deed of conveyance from the Forest Company to the Park Association, dated August 2, 1890, did not retain on the face of the conveyance a lien to secure the unpaid purchase money, as by law required, but only provided that a deed of trust should be executed by the Park Association conveying the same property conveyed to it in trust to secure the payment of said unpaid purchase money, and that such deed of trust was never recorded; that in October, 1891, the Forest Company delivered to the Park Association a deed of release which had been executed in August previous, by which said Forest Company acknowledged the satisfaction of all the unpaid purchase money due it at that time from the Park Association, and that this was done in order to enable the Glasgow Company to demand and receive from the insurance companies payment of the insurance policies on the hotel property, which had then just been destroyed by fire, and that for the same purpose the deed of trust dated June 1, 1891, from the Glasgow Company to S. H. Letcher, trustee, to secure the payment of the 90 bonds for \$1,000 each, with the coupons on the same, was held back, and not delivered to said Letcher, trustee; and that this was done by agreement with the For-

est Company. To this petition, Henry Strong, the holder of a portion of the bonds secured by said deed of trust from the defendant company to S. H. Letcher, trustee, the said S. H. Letcher, trustee, and the Forest Company file a demurrer on the following grounds:

"(1) That the said petition commences, in effect, a new suit, over which the jurisdiction of this court is not shown, by such petition, to extend; (2) that the said petition seeks to raise issues foreign to those involved in the cause wherein such petition hath been filed, as well as to add new parties to said cause; (3) that the said petition is vague, uncertain, and insensible; (4) that the petitioner in said petition hath been guilty of great and unexplained laches and delay in questioning the operation, according to its terms, of the said deed of trust to S. H. Letcher, trustee, recorded on the 30th day of December, 1891; (5) that it is not pretended, in and by the said petition, that the certain bonds therein mentioned were nonnegotiable instruments, nor that the holders thereof are not bona fide holders for valuable consideration, in the usual course of business, without notice; (6) that the said petition imputes to the demurrant no notice of any of the matters or things in pais in said petition alleged against the operation, according to its terms, of the aforementioned deed of trust; (7) that the said petition contains no averments sufficient, in point of law, to indicate that the aforesaid deed of trust was an incumbrance created by the Glasgow Investment Company upon the property of the said company for the purpose of giving a preference to the Natural Bridge Forest Company over any creditor of the former company; and (8) that the said petition doth not contain any matter of equity whereon this court can ground any decree or give any relief against this demurrant."

The petition and demurrer put in issue the whole record in the cause, and the following facts are presented for the consideration of the court:

On August 2, 1890, the Forest Company conveyed to the Park Association the land involved in this suit, for \$160,000, of which \$10,000 was to be paid in cash, and the balance to be paid in certain deferred payments, with interest at 5 per cent. per annum, the deferred payments to be secured by a deed of trust of even date. This deed of trust was executed, but not recorded. On June 1, 1891, the Park Association conveyed the same land to the Glasgow Company. In this deed of conveyance special reference is made to the deed from the Forest Company to the Park Association, dated August 2, 1890. It recites:

"The object of this conveyance being to transfer to the said party of the second part all of the property, privileges, easements, and rights of every description conveyed to the party of the first part in the above-mentioned deed of conveyance; the same to be received and held by the said party of the second part upon the terms, stipulations, and conditions therein set forth."

And this deed of conveyance further stipulates that:

"By the acceptance of this deed of conveyance, it is to be understood that the party of the second part assumes and guaranties payment to the Natural Bridge Forest Company of all unpaid purchase money due, or to become due, under the above-described deed of conveyance from the said Natural Bridge Forest Company to the Natural Bridge Park Association."

On even date with the last-mentioned deed between the Park Association and the Glasgow Company, the latter company executed a deed of trust to S. H. Letcher, trustee, in which the Forest Company was made party of the third part, and which conveys the same property to said S. H. Letcher, trustee, in trust for purposes therein named.