

from and after the expiration of the lease from O'Hara, and found and allowed to the Mobile & Ohio Railroad Company \$1,000 therefor. In order to have reached that judgment, the question involved in this present case must have necessarily been decided by the court. If the Mobile & Ohio Railroad Company was entitled, as against O'Hara and the Railroad Equipment Company, to compensation for the storage of its cars, it necessarily follows that it was in no wrong with respect to either of those parties in holding the possession of said cars.

In my opinion, therefore, the plaintiff is estopped from claiming anything by virtue of the facts stated in his petition in this case by the judgment rendered in the circuit court of the United States, to which he was a voluntary party. There must, therefore, for both of the reasons already assigned, be a judgment in favor of the defendant.

FARRAR et al. v. BERNHEIM.

(Circuit Court of Appeals, Fifth Circuit. April 21, 1896.)

No. 427.

1. FRAUDULENT CONVEYANCES—SUIT AGAINST GRANTEE'S HEIRS.

The heirs of one who received a conveyance of real estate, without paying any consideration, and merely for the purpose of enabling the grantor to defraud his creditors, have no right to hold the property, as against such creditors.

2. SAME—LIMITATION OF ACTIONS.

The statute of limitations does not run in favor of one who receives a mere voluntary conveyance for the purpose of enabling the grantor to defraud his creditor, unless it be shown that the creditor had knowledge of the fraud, and then slept on his rights.

3. EQUITY PRACTICE—REFERENCE TO MASTER—WRITTEN CONSENT.

Upon a written consent, entered as an order of court, to refer all questions of law and fact to a particular standing master, the findings of that officer are usually conclusive. They cannot be set aside at the mere discretion of the court, but can only be avoided upon exceptions showing that the report is unsupported or essentially defective.

4. SAME—EXCEPTIONS TO MASTER'S REPORT.

A master's report is received as true, and exceptions thereto will be regarded only so far as they are supported by the special statements of the master, or by evidence which must be brought to the attention of the court by reference in the exceptions to the particular testimony relied on to set the report aside.

Appeal from the Circuit Court of the United States for the Northern District of Texas.

M. L. Crawford, for appellants.

W. L. & E. J. Simkins, for appellee.

Before PARDEE, Circuit Judge, and BOARMAN and SPEER, District Judges.

SPEER, District Judge. The record of this cause will make plain the material facts following. In the year 1879, Reisman & Freeman was the title of a mercantile firm of the town or city of Ennis. This is in the county of Ellis, and in the state of Texas. The firm dealt

in dry goods. The dry goods were vended from a storehouse familiarly known in that community as the "Reisman Corner." The house itself at that time was a wooden structure, and it was situated on lot No. 1 in block No. 11 of the surveyed plan of Ennis. It is this lot which is the object of the controversy the court has heard. The controversy originated in the following manner: In the year already mentioned, Reisman & Freeman failed,—that is to say, they became insolvent; and, as they freely testify, they hastened to dispose of their property, as best they could, in such manner as would most effectually disappoint their creditors in the hope that any of the firm holdings might be subjected to the payment of the firm debts. Among these assets was the Reisman corner. This was conveyed by the deed of the insolvent firm to one Aaronson, and Aaronson paid nothing for it, but testified that he took it merely to defeat the creditors. Then the firm of Reisman & Freeman dissolved, and Reisman purchased Freeman's interest in the lot. Aaronson, at Reisman's request, made a deed of the Reisman corner to one J. R. Farrar, who, like Aaronson, paid nothing. Notwithstanding this, the deed to him recited that Farrar paid \$1,500 in cash, and gave his note for \$1,000, as the price for the lot. Farrar was not present when Aaronson executed and delivered the deed, for Farrar, to Reisman. It is true that the original note mentioned in the deed as a part of the consideration was prepared for Farrar's signature, but he never signed it; and this appeared by the original draft of the note itself, which was produced at the trial, and identified by the attorney who drew it. The character of Farrar's holding is also made evident by the fact that he paid (or accounted for) the monthly rents to Reisman. Moreover, certain executions against Reisman & Freeman were levied on this corner lot. This was after the conveyance to Farrar. Under this levy the property was sold by the sheriff as the property of Reisman & Freeman, and bought in by Farrar. Farrar interposed no claim of any kind as the owner of the property. The evidence makes plain the fact that, one month before the sale by the sheriff, the debtor, Reisman, himself paid to the attorney who held these executions the full amount due thereon, and the attorney, at Reisman's request, wrote a transfer of the judgments to Farrar, and delivered the assignment to Reisman's attorney. This was, as already stated, a month before the sale by the sheriff, above mentioned. The night that Reisman & Freeman executed the deed to Farrar, their place of business was closed by an attachment. Besides, Farrar stated to a number of the witnesses, and at different times, that he held the property in question for Reisman. It is true that, in 1883, Farrar, being then in possession of the lot, erected upon it a brick storehouse. But it was in evidence that he advanced the cost of this building for Reisman, who, on his part, stipulated that Farrar should appropriate the rents until he should be reimbursed. There is also written evidence to show the character of Farrar's tenure. For instance, this order:

J. W. McNeil: Please pay Joe Reisman one hundred and thirty dollars (\$130.00), for two months' rent on saloon.
April 1st, 1884.

J. R. Farrar.

This was after the brick building was erected. It further appears, from the testimony of Reisman, that during Farrar's tenancy, and since his death, the rents of the property have largely exceeded any claim for the advances Farrar might have held against it. It appears that Reisman several times attempted to have a settlement with Farrar, in order that he might regain actual possession, and finally Farrar threatened "to shoot the top of Reisman's head off" if he ever mentioned the subject again. After hearing this remark, Reisman preserved an unbroken silence with relation to this topic, until after Farrar's death. Farrar died in November, 1888, and his legal representatives, the defendants, are holding the Reisman corner and collecting the rents. It further appears that on the 15th day of March, 1889, Jacob Bernheim & Co. obtained in the district court of Dallas county, Tex., a judgment against Reisman for \$1,362.80, with interest and costs of suit. By virtue of this the lot in question was sold, and Charles Bernheim became the purchaser. On the sheriff's title, thus obtained, Bernheim brought suit in the circuit court to recover the lot and the rentals thereon; but, owing to technical irregularities, this judgment was not relied on for the purpose of the suit to establish title, filed by Bernheim. On the same day, and in the same court, one Max London recovered against Reisman \$4,981.66. On this judgment, execution was issued the 17th day of April, 1889. The sheriff declining to sell because of the previous sale to Bernheim, a writ of venditioni exponas, under the Texas practice, was made out on the 14th day of October, 1889; and in obedience to this the sheriff on the 5th day of November, 1889, again sold the property. Again Charles L. Bernheim became the purchaser, and to him the sheriff gave his official deed. In the meantime, Charles L. Bernheim had bought the Max London judgment, and thereafter amended his petition, setting out the title he had acquired by the sale under that judgment. The cause was delayed for several years, because it was impracticable to serve James Farrar, Jr., who could not be found when he was needed. The cause was finally transferred, by order of the court, to the equity docket; and by consent of all the parties the questions at issue were referred to H. S. Lathrop, standing master, to hear and determine the same. The master has made his report in favor of the plaintiff. The report was confirmed by decree of the circuit court, and the defendants appealed to this court.

The record of this case is voluminous, but the foregoing statements will, we think, make it evident that the finding of the master and the decree of the circuit court were demanded by the settled principles of equity relative to such a controversy. The defendants the wife and children of Farrar are merely volunteers. They take no greater right than he had, and he had none, as against Reisman's creditors. Indeed, the effort to cloak this valuable asset of the insolvent firm so that the creditors were defeated was a flagrant and palpable fraud. As between Reisman and Farrar, no court would interfere, but Bernheim is entitled to the consideration and assistance of a court of equity. The position that the Texas statute of limitations will protect the heirs of Farrar in their enjoyment of the Reisman

corner is untenable. It was based upon a fraudulent conveyance, where title did not pass, and where it was not intended to pass. It was merely a fraudulent device to defeat creditors, and affords no beginning point for the statute of limitations, unless, indeed, the evidence had disclosed the fact that the creditor had been advised of the fraud, and then slept over his right until the bar of the statute had intervened. This does not appear. In the Texas courts there are numerous well-considered cases supporting this view. *Munson v. Hallowell*, 26 Tex. 475; *McCamant v. Batsell*, 59 Tex. 364; *Raymond v. Cook*, 31 Tex. 374; *Beard v. Blum*, 64 Tex. 61. See, also, *Rives v. Stephens* (Tex. Civ. App.) 28 S. W. 707. It is, moreover, true, as insisted by the appellee, that, under the written consent to refer all questions of law and fact to the determination of a particular standing master, the finding of that officer is usually conclusive. Such a consent, entered as an order of the court, is a submission of the controversy to a special tribunal selected by the parties, to be governed by the ordinary rules applicable to the administration of justice in tribunals established by law; and its determinations are not subject to be set aside and disregarded at the mere discretion of the court. *Kimberly v. Arms*, 129 U. S. 512, 9 Sup. Ct. 355. Such findings may be avoided, however, on exceptions showing that the report is unsupported, or essentially defective, but not otherwise. *Id.* And in passing on exceptions to a master's report the report of the master is received as true, and the exceptions thereto are to be regarded so far only as they are supported by the special statements of the master, or by evidence which must be brought to the attention of the court by reference in the exceptions to the particular testimony relied upon to set the report aside. *Harding v. Handy*, 11 Wheat. 126; *Jaffrey v. Brown*, 29 Fed. 479. Here the report of the master makes no special statement of the evidence, and the exceptions offered are assignments of alleged error, unsupported by reference to the evidence as the rule requires. For these reasons we decline to disturb the finding and decree of the circuit court, and a decree of affirmance will be entered.

BEALL v. COWAN et al

(Circuit Court of Appeals, Ninth Circuit. June 1, 1896.)

No. 256.

ASSIGNMENTS FOR CREDITORS—VALIDITY—MORTGAGES SECURING PREFERENCE.

The Oregon statute declaring invalid general assignments for creditors, unless made for all creditors alike (Hill's Laws, c. 28, § 3173), does not prevent an insolvent debtor from preferring one creditor to another, and does not apply to or invalidate a mortgage made by an insolvent to trustees to secure certain creditors therein named, even though the ultimate effect of the mortgage may be to distribute the whole of the insolvent's estate to such creditors, in the same manner as if an assignment had been made in the mode interdicted by the statute. *Hembree v. Blackburn*, 19 Pac. 73, 16 Or. 153, and *Stout v. Watson*, 24 Pac. 230, 19 Or. 251, applied and followed.