

that it was set on foot by covin, and thus avoid it. The plaintiff here was neither party nor privy in respect of land which he held by a previous deed from the father."

This language is very pertinent to the case in hand.

Nor is Philip Wilkey concluded by the proceeding in the orphans' court of Fayette county. *Russell v. Place*, 94 U. S. 606, 608. That proceeding related to personal estate. It did not at all concern this land. Moreover, Philip was not a party to that proceeding, and was not before the auditor.

### Finding of the Court.

The parties, by stipulation in writing, having waived a jury, and agreed upon a trial of the issue of fact by the court, this cause accordingly came on for trial by the court, without the intervention of a jury, on the 24th day of November, 1896; and on that day and the succeeding day the court fully heard the parties and the evidence submitted by them, respectively, and the arguments of counsel; and now, this 27th day of January, 1897, the court, upon due consideration, finds in favor of the defendant.

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### O'CONNELL et al. v. CENTRAL BANK.

(Circuit Court, D. Oregon. February 9, 1897.)

No. 2,177.

#### ASSIGNMENTS FOR BENEFIT OF CREDITORS—MORTGAGE SECURING PREFERENCES—OREGON STATUTE.

The Oregon statute declaring invalid general assignments for creditors, unless made for all creditors (Hill's Ann. Laws, § 3173), does not apply to a mortgage made by an insolvent to secure one creditor, though it covers all the mortgagor's property, and though the mortgagee had knowledge of his insolvency. *Beall v. Cowan*, 21 C. C. A. 267, 75 Fed. 139, followed.

This was a suit in equity by Eugene O'Connell and others against the Central Bank to set aside a mortgage made to the latter by the Oakland Box & Barrel Manufacturing Company.

Wm. Wirt Minor and J. W. Bennett, for complainants.

E. B. Watson and J. F. Watson, for defendant.

BELLINGER, District Judge. This is a suit to set aside a mortgage made by the Oakland Box & Barrel Manufacturing Company to the bank. It is claimed and appears that the mortgage in question was upon all the property of the Oakland Box & Barrel Manufacturing Company, and that the Oakland Box & Barrel Manufacturing Company was insolvent at the time the mortgage was made, and I have no doubt but that the bank knew of this condition. Nevertheless, it is the law of this circuit that such a mortgage is not within the provision of the statute (section 3173, Hill's Ann. Laws Or.) which provides that "no general assignment of property by an insolvent, or in contemplation of insolvency, for the benefit of creditors, shall be valid unless it be made for the benefit of all

his creditors in proportion to the amount of their respective claims." In the case of *Beall v. Cowan*, 21 C. C. A. 267, 75 Fed. 139, the circuit court of appeals for this circuit, following the decisions of the supreme court of the state of Oregon, held, in effect, that the court would regard the form of the instrument, and, if it be not in form an assignment, it is not within the act quoted. The doctrine of this decision, and of the decisions of the supreme court upon which it is founded, is that the statute "was not intended to prevent an insolvent debtor from preferring one creditor to another, and was not intended to apply to any and all instruments or means by which an insolvent might divest himself of his property, and thereby pay or secure certain creditors to the exclusion of others, but was intended to apply to the subject-matter of the statute, which was the voluntary distribution of an insolvent's estate through an assignee, and substantially in the method contemplated in the statute,—a proceeding by which the insolvent surrendered his estate to another for the benefit of his creditors, and under which the assignee distributed the estate, and in which the transfer became effective without the assent of the creditors, and the insolvent lost all dominion over his property." Following these decisions, I must hold that the mortgage in this case is not within the statutory definition of a general assignment. It is therefore ordered that the bill of complaint herein be dismissed.

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COWEN et al. v. ADAMS et al.

(Circuit Court of Appeals, Sixth Circuit. February 8, 1897.)

No. 367.

1. SUIT UNDER WILL.—NECESSARY PARTIES.—LEGATEES.

One M. made his will, in 1880, leaving his estate to be equally divided among his four children and a grandson, the son of a deceased child. The will also referred to advances made by the testator to his children, and charged to them on his books, and declared that the provision made by the will was to be in addition to such advances, and that, in the settlement of his estate, such advances already made, and any that should be afterwards made, should not be treated as advancements, but as gifts, not in any manner to be accounted for by the children or grandson. Some time after the making of this will, W., one of M.'s sons, met with financial disaster, and became very deeply involved. M. then directed J., another son, to do what was necessary to relieve W., and thereafter, through J., advanced very large sums to pay W.'s debts, taking W.'s notes therefor, and taking assignments of collateral from some of W.'s creditors. Shortly before the death of M., and when it was expected, the persons who afterwards became administrators with the will annexed took from W. a paper authorizing the application of his share of his father's estate to these notes. This paper W. afterwards revoked, and then revoked the revocation, and afterwards gave the administrators a receipt for nearly the whole amount of his share of the estate by its application to the payment of the notes, and thereafter he received the remaining collaterals, taken by his father when he paid W.'s debts, and which had not been realized on by him. In the meantime, in a suit instituted against W. by his wife, a decree had been entered, pursuant to which he conveyed to trustees, for the benefit of his family, all his interest in his father's estate. The trustees under this deed brought suit against the administrators executing M.'s will to set aside the receipt given to them by W., to establish W.'s right to his interest in his