a court of equity, or to ask for an injunction to restrain the receiver appointed by the state court from carrying out its instructions. The motion is denied, and restraining order vacated.

LILIENTHAL v. DRUCKLIEB et al.

(Circuit Court, S. D. New York. February 16, 1897.)

1. FEDERAL COURTS—JURISDICTION—RIGHTS UNDER STATE STATUTES.
Whenever a statute of a state gives a right, such right may, on proper citizenship, be enforced by suitable proceedings in the federal courts.

2. SAME—FRAUDULENT CONVEYANCES—FOREIGN CREDITORS.
Under chapter 740, Laws N. Y. 1894, providing that a creditor of a deceased insolvent debtor, having a claim over $100, may disaffirm, treat as void, and resist all acts done and conveyances made in fraud of creditors by such debtor, and may maintain an action for the purpose, though no judgment has been obtained, a foreign creditor of a deceased debtor may maintain an action in a federal court in New York to set aside transfers made by him, though no judgment has been obtained in New York and no administration has been taken out there.

3. FOREIGN JUDGMENTS—FRAUDULENT CONVEYANCES.
A judgment of a French tribunal, adjudicating that a wife is entitled to a certain amount of property as against her husband, both being residents of France, which judgment has been voluntarily liquidated by him in part, is sufficient to constitute the wife a creditor of the husband for the purpose of bringing suit to set aside his fraudulent conveyances under Laws N. Y. 1894, c. 740.

William H. Blymyer, for plaintiff.
Henry B. Twombly and Louis O. Van Doren, for defendants.

WHEELER, District Judge. This suit is brought to reach property that was of Maurice Lilienthal, husband of the plaintiff, deceased, both of Paris, France, which is alleged to have come into the hands of the defendants here in fraud of the rights of creditors. The plaintiff has no judgment here on which execution could issue against the property, and no administrator has been appointed here. Without these, by the common law well established, the plaintiff would have no standing here. But by chapter 740 of the Laws of New York of 1894, amending chapter 314 of the Laws of 1858, as amended by chapter 487 of the Laws of 1889, any executor or administrator may, for the benefit of creditors, disaffirm, treat as void, and resist all acts done and transfers and agreements made in fraud of the rights of any creditor; "and any creditor of a deceased insolvent debtor having a claim or demand against the estate of such deceased debtor exceeding in amount the sum of one hundred dollars, may, in like manner, for the benefit of himself and other creditors interested in the estate or property of such deceased debtor, disaffirm, treat as void, and resist all acts done, and conveyances, transfers and agreements made, in fraud of the right of any creditor or creditors, by such deceased debtor, and for that purpose may maintain any necessary action to set aside such acts, conveyances, transfers or agreements; and for the purpose of maintaining such action, it shall not be necessary for such creditor to have obtained a judgment upon

his claim or demand, but such claim or demand, if disputed, may be proved and established upon the trial of such action."

This statute is said, in argument, to furnish no warrant for this suit here. But, whenever a statute of a state gives a right, the right given may, on proper citizenship, be enforced by suitable proceedings in the federal courts. In re Broderick's Will, 21 Wall. 503; Ellis v. Davis, 109 U. S. 485, 3 Sup. Ct. 327; Holland v. Challen, 110 U. S. 15, 3 Sup. Ct. 495. The plaintiff had property when she was married, in 1865. It came into the possession of her husband, and by the French law, as shown by a witness learned in that law and not disputed, she was entitled to a judgment of separation of her goods against him in the civil tribunal of the Seine, Paris. She has proved such a judgment March 7, 1892, in that tribunal, with a reference to a notary in liquidation, by an examined copy, and a liquidation at 161,362 francs, with interest, upon which he made satisfaction in furniture, towards interest, of 9,957 francs, leaving the balance unsatisfied, which has so remained. This may be such a judgment upon the status of the property of the parties under their marital relations in the country of their domicile as will be recognized everywhere. Hilton v. Guyot, 159 U. S. 113, 16 Sup. Ct. 139. But, whether it is by itself so or not, his recognition of it by voluntary satisfaction of it would be a valid recognition of it as a debt of that character to the amount remaining, which seems to be equal to $29,166.77, besides interest, and many times more than the $100 required by the statute of New York mentioned. As, by the statute, she need only show that she is a creditor, this seems to be sufficient, taken all together, to show that she is such.

The fraudulent transactions were had in 1888 and 1889, some time before this judgment, and she is said not to have been then so a creditor that she could be defrauded by them. The husband, however, appears to have disposed of her property, which went into this judgment in 1888, and if that was the foundation of her claim it was nearly contemporaneous with the transaction. But the testimony of the same witness shows that by the French law the estate of the wife does not become the property of the husband by being reduced to his possession, but remains hers, and is separated, as having been hers all the while. This seems to be so upon the authorities. 2 Kent, Comm. 185. So she is a creditor, against whom the fraud charged would operate and might have been directed.

Lilienthal had a store in New York, of which the defendant Charles Drucklieb had been in charge for a few months, with goods and dues to the amount and value, in all, of about $15,000, and perhaps much more. These are claimed to have been bought for $100 and wages at a time when a judgment of $14,000 against Lilienthal in New York was impending. That the transaction was a sham is apparent, and the various stories of the defendants about how it was carried on make this the more clear. Julius Drucklieb became a partner with Charles in the same store and with the same goods. The amount received by the defendants is not clear. The defendant Charles Drucklieb has, on legal proceedings, been compelled to pay over quite large amounts to other creditors of the plaintiff. He says, in his

testimony, that he expended $3,100 in litigation about this, and had about $500 left from the whole, which would leave about $3,600 of avails of the property converted to his own use. No decree beyond this can safely be made upon the evidence. The case should go to a master to ascertain the amount of property and claims received by the defendants, unless the plaintiff prefers a decree for this amount.

Decree for plaintiff.

BROWN et al. v. GROVE et al.

(Circuit Court of Appeals, Fourth Circuit. May 14, 1897.)

No. 211.

1. EQUITY PRACTICE—MASTER—REFERENCE DISCRETIONARY.
   Reference to a master to ascertain an amount due is discretionary with the court, and the determination of the amount without such reference is not error.
2. WITNESS—PRIVILEGED COMMUNICATION—ATTORNEY AND CLIENT.
   An attorney acting for a firm in completing arrangements for securing it by a trust deed for a line of credit to be allowed on goods to be ordered by the grantor is not disqualified from testifying as to the negotiations leading up to the deed by the fact that his fee for drawing it was paid by the grantor.
3. EVIDENCE—CONTEMPORANEOUS WRITINGS.
   Writings contemporaneously executed by the parties to a deed of trust are admissible in evidence in a suit to enforce the trust, for the purpose of supplementing the deed and explaining the real intention of the parties.
4. EQUITY JURISDICTION—COMING INTO EQUITY WITH CLEAN HANDS.
   A. agreed to give credit to B., who was financially embarrassed, in consideration of a deed of trust made by B., which, for business reasons, was executed to C., a clerk of A. In a suit to enforce the trust, *held*, that the defense that complainant did not come into equity with clean hands had no application, there being nothing illegitimate in the transaction; and that, in any event, the maxim could not be invoked by B., who had received the benefit of the transaction.
5. LIMITATION OF ACTIONS—DEED OF TRUST.
   Under the statute of West Virginia, the period of limitation of actions to enforce a deed of trust given as security is 20 years.
6. SAME—CONTRACT IN WRITING.
   Under the statute of limitations of West Virginia (Code, c. 104, § 6), a debt evidenced by contemporaneous memoranda made by each party to a deed of trust to secure the debt, as parts of the contract then made, and explaining and limiting the deed, is a debt evidenced by contract in writing, signed by the party to be charged, and therefore has 10 years to run.

Appeal from the Circuit Court of the United States for the District of West Virginia.

E. G. Smith, for appellant.
John Bassel, for appellees.

Before SIMONTON, Circuit Judge, and HUGHES, District Judge.

SIMONTON, Circuit Judge. This case comes up on appeal from the circuit court of the United States for the district of West Virginia. The bill was filed to enforce a deed of trust in the nature of a mortgage of a lot of land in Clarksburg, W. Va. Smith, Brown & Co. were merchants doing business in the town of Clarksburg.

Their establishment was consumed by fire. They were not insured, and the firm became greatly embarrassed. Wood, Brown & Co. were merchants of Philadelphia, with whom this Clarksburg firm had had much dealing. They came to the assistance of the Clarksburg firm, and agreed, upon security, to sell them goods on credit. The Philadelphia firm did not wish it to be published to the world that they were doing a large business with a firm so much impaired in credit as the Clarksburg firm. And therefore it was agreed between the two firms that the security should be executed to James A. Campbell, the head clerk of the credit department of the Philadelphia firm. The Clarksburg firm, in the impaired condition of their credit, did not wish published to the world the full extent of their liability. For this reason the deed of trust which was taken as security had this recital:

"Whereas, the parties of the first part [Smith, Brown & Co.] have accepted a certain business proposition of James A. Campbell, of the city of Philadelphia, and state of Pennsylvania, by which he, said Campbell, may, in case of accident and misfortune, under liability for the parties of the first part, and the parties of the first part being willing to secure said Campbell against such liability and loss, do for the consideration aforesaid," etc.

This paper is dated 23d of July, 1888, but the transaction was not completed, and the deed was not recorded, until the 13th of October, 1888. The negotiations were conducted by Mr. Bassel, who has as his client the Philadelphia firm. In August, 1888, he received a note from one of the firm of Smith, Brown & Co. in these words:

"Philadelphia, Pa., Aug., 1888.

"In consideration and for a deed of trust this day executed by Smith, Brown & Co. in favor of James A. Campbell, of Wood, Brown & Co., of Philadelphia, to secure said Wood, Brown & Co. against loss by reason of selling goods on open account to said Smith, Brown & Co., we hereby agree to extend to Smith, Brown & Co. a line of credit up to thirty-five hundred dollars, but not to exceed this amount at any one time.

"Mr. Bassel—Dear Sir: We think this about what we will want from Wood, Brown & Co. in the way of a consideration for the deed of trust. You will say to W., B. & Co. it is due S., B. & Co. to have such a paper, and that you hold the deed of trust subject to their orders on receipt of this paper.

"Yours, truly, S., B. & Co."

Thereupon Mr. Bassel prepared the formal memorandum to be signed by the Philadelphia firm, as follows:

"Philadelphia, Pa., Sept. 18, 1888.

"Whereas, A. G. Smith, John W. Brown, and Beeson H. Brown, composing the firm of Smith, Brown & Co., of Clarksburg, West Virginia, on the 27th day of July, 1888, executed to John Bassel, as trustee, a deed of trust in favor of James A. Campbell; and whereas, the real purpose of said trust was to secure the undersigned, Wood, Brown & Co., against loss by reason of the sale of goods to said Smith, Brown & Co. upon credit, in consideration of the execution of the said deed of trust: We hereby agree to extend to the said Brown & Co. a line of credit to the amount of thirty-five hundred dollars, but not to exceed such sum at any one time. Wood, Brown & Co."

The deed of trust was then delivered, and recorded in the proper office. The credit was given, and the amount of indebtedness incurred and now unpaid is $4,466.97. In the meanwhile Wood, Brown & Co. have become insolvent, and have made an assignment for the benefit of *their* creditors, and this bill is filed by the assignee and by