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Sexton Vs. Wheaton

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Court : US Supreme Court

Decided On : 1823

Appeal No. : 21 U.S. 229

Appellant : Sexton

Respondent : Wheaton

Judgement :

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U.S. Supreme Court Sexton v. Wheaton, 21 U.S. 8 Wheat. 229 229 (1823)

Sexton v. Wheaton

21 U.S. (8 Wheat.) 229

APPEAL FROM THE CIRCUIT COURT FOR THE

DISTRICT OF COLUMBIA AND COUNTY OF WASHINGTON

SYLLABUS

A post-nuptial voluntary settlement, made by a man who is not indebted at the time upon his wife is valid against subsequent creditors.

The statute 13 Eliz. c. 5, avoids all conveyances not made on a consideration deemed valuable in law as against previous creditors.

But it does not apply to subsequent creditors if the conveyance is not made with a fraudulent intent.

A voluntary settlement in favor of a wife and children is not impeachable on that ground alone by subsequent creditors:

The circumstances that the property thus conveyed constituted a large portion of the estate of the grantor and that he failed within a short period after the date of the conveyance may awaken suspicion and strengthen other circumstances, but, taken alone, are not proof of fraud.

What circumstances will constitute evidence of such a fraudulent intent.

This was a bill brought by the appellant, Sexton, in the court below to subject a house and lot in the City of Washington, the legal title to which was in the defendant, Sally Wheaton, to the payment of a debt for which the plaintiff had obtained a judgment against her husband, Joseph Wheaton, the other defendant.

The lot was conveyed by John P. Van Ness and Maria, his wife, and Clotworthy Stepenson to the defendant, Sally Wheaton, by deed bearing date 21 March, 1807, for a valuable consideration acknowledged to be received from the said Sally. And the plaintiff claimed to subject this property to the payment of his debt upon the ground that the conveyance was fraudulent and therefore void as to creditors.

The circumstances on which the plaintiff relied

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in his bill to support the allegation of fraud were that the said house and lot were purchased by the defendant, Joseph, who, contemplating at the time carrying on the business of a merchant in the said City of Washington, procured the same to be conveyed to his wife and obtained goods on the credit of his apparent

ownership of valuable real property. That for the purpose of obtaining credit with the commercial house of the plaintiff, in New York, he represented himself in his letters as a man possessing real estate to the value of $20,000, comprehending the house in question besides 100 bank shares and other personal estate. That the defendant, Sally, knew and permitted these representations to be made. That the defendant Joseph in the presence of the defendant Sally applied to General Dayton, the friend of the plaintiff, to be recommended to a commercial house in New York, and in the statement of his property, as an inducement to make such recommendation, he included the premises. That the defendant Sally permitted this misrepresentation, and did not undeceive General Dayton, although she had many opportunities of doing so.

In support of these allegations, the plaintiff annexed to his bill several letters written by the defendant Joseph in the City of Washington to the plaintiff in the City of New York soliciting a commercial connection and advances of goods on credit. The first of these letters was dated 2 September, 1809. The letters stated that the plaintiff's house had been recommended to the defendant by their mutual friend, General Dayton,

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represented the defendant's fortune as considerable, spoke of the house in which he was to carry on business as his own, and held out the prospect of regular and ample remittances.

The bill further stated that upon the faith of these letters and on the recommendation of General Dayton, the plaintiff advanced goods to the defendant Joseph to a considerable amount, who failed in making the promised remittances, and on the plaintiff's withholding further supplies of goods and pressing for payment, he avowed his inability to pay, declared himself to be insolvent, and then stated that the house in controversy was the property of his wife.

Some arrangements were made by which the goods in the store and the books of the defendant Joseph were delivered to the plaintiff, but after paying some

creditors who were preferred, a very small sum remained to be applied in discharge of a judgment which the plaintiff had obtained in January, 1812, for the sum of $8,249.29 cents. On this judgment an execution was issued, by which the life estate of Joseph Wheaton was taken and sold for $300, the plaintiff being the purchaser.

The bill prayed that the property, subject to the plaintiff's interest therein under the said purchase, might be sold and the proceeds of the sale applied to the payment of his judgment. It further stated that improvements to a great amount had been made since the conveyance to Sally Wheaton, and prayed that, should the court sustain the said

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conveyance, the defendant Sally might be decreed to account for the value of those improvements.

The answers denied that the house and lot in contest were purchased in the first instance by Joseph Wheaton or conveyed to his wife with a view to his entering into commerce, and averred that they were purchased for Sally Wheaton, and chiefly paid for out of the profits made by her industry, and saved by her economy in the management of the affairs of the family while her husband was absent executing the duties of his office as Sergeant at Arms to the House of Representatives. The answers also stated that in January, 1807, when the conveyance was made, Joseph Wheaton was sergeant at arms to the House of Representatives, expected to continue in that office, had no intention of going into trade, and had no knowledge of the plaintiff. The design of going into commerce was first formed in the year 1809, when, being removed from his office and having no hope of being reinstated in it, he turned his attention to that object as a means of supporting his family. He then, in a letter dated 24 August, applied to General Dayton as a friend to recommend him to a house in New York, and received from that gentleman a letter dated the 29th of the same month, which is annexed to the answer. In this letter, General Dayton says

"pursuant to your request, I recommend to you the house of Messrs. Sexton & Williamson, with which to form the sort of connection which you propose in New York. They have sufficient capital. . . . The proper course will be for

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you to write very particularly to them, stating your present advantageous situation, your prospects and plans of business, and describing the nature and extent of the connection which you propose to form with them, and then refer them to me for my knowledge of your capacity, industry, probity,"

&c.;

The defendant Joseph, in his answer, stated that in consequence of this letter, he wrote to the said house of Sexton & Williamson. He admitted that his account of his property was too favorable, but denied having made the statement for the purposes of fraud, but from having been himself deceived respecting its value. He denied having ever told General Dayton that the house was his, and thinks he declared it to be the property of his wife. Sally Wheaton denied that she ever heard her husband tell General Dayton that the house was his property; that she ever in any manner contributed to impose on others the opinion that her husband was more opulent than he really was, or ever admitted that the house she claims was his. She admitted that she saw a letter prepared by him to be sent to Sexton & Williamson in the autumn of 1809, which she thought made too flattering a representation of his property, and which she therefore dissuaded him from sending in its then form. She then hoped that her persuasions had been successful.

The answers of both defendants stated that Joseph Wheaton was free from debt when the conveyance was made, and insisted that it was made *bona fide.*

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The court below dismissed the bill, and from this decree the plaintiff appealed to this Court.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court, and, after stating the case, proceeded as follows:

The allegation that the house in question was purchased with a view to engaging in mercantile speculations and conveyed to the wife for the purpose of protecting it from the debts which might be contracted in trade, being positively denied and neither proved by testimony nor circumstances, may be put out of the case.

The allegation that the defendant Sally aided in practicing a fraud on the plaintiff or in creating or giving countenance to the opinion that the defendant Joseph was more wealthy than in truth he was is also expressly denied, nor is there any evidence in support of it other than the admission in her answer that she had seen a letter written by him to the plaintiff, in the autumn of 1809, in which he gave, she thought, too flattering a picture of his circumstances. This admission is, however, to be taken with the accompanying explanation, in which she says that she had dissuaded him, she had hoped successfully, from sending the letter in its then form.

This fact does not, we think, fix upon the wife such a fraud as ought to impair her rights, whatever they may be.

The plaintiff could not know that this letter was seen by the wife or in any manner sanctioned by or known to her. He had therefore no right to suppose that there was any waiver of her interest, whatever it might be, nor had he a right to assume anything against her or her claims in consequence

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of his receiving this letter. The case is very different from one in which the wife herself makes a misrepresentation or hears and countenances the misrepresentation of her husband. The person who acts under such a misrepresentation acts under his confidence in the good faith of the wife herself. He has a right to consider that faith as pledged, and if he is deceived, he may

complain that she has herself deceived him. But in this case the plaintiff acted solely on his confidence in the husband. If he was deceived, the wife was not accessory to the deception. She contributed nothing towards it. When she saw and disapproved the letter written by her husband, what more could be required from her than to dissuade him from sending it in that form? Believing, as we are bound to suppose she did, that the letter would be altered, what was it incumbent on her to do? All know and feel, the plaintiff as well as others, the sacredness of the connection between husband and wife. All know that the sweetness of social intercourse, the harmony of society, the happiness of families depend on that mutual partiality which they feel or that delicate forbearance which they manifest towards each other. Will any man say that Mrs. Wheaton, seeing this letter, remonstrating against it, and believing that it would be altered before sending it, ought to have written to this stranger in New York to inform him that her husband had misrepresented his circumstances and that credit ought not to be given to his letters? No man will say so. Confiding, as it was natural and

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amiable in her to confide, in his integrity, and believing that he had imposed on himself, and meant no imposition on another, it was natural for her to suppose that his conduct would be influenced by her representations and that his letter would be so modified as to give a less sanguine description of his circumstances. We cannot condemn her conduct.

A wife who is herself the instrument of deception or who contributes to its success by countenancing it may with justice be charged with the consequences of her conduct. But this is not such a case, and we consider the rights of Mrs. Wheaton as unimpaired by anything she is shown to have done.

Had the plaintiff heard this whole conversation as stated in the answer; had he heard her express her disapprobation of the statements made in the letter and dissuade her husband from sending it without changing its language; had he seen them separate, with a belief on her part that the proper alterations would be made in it, he would have felt the injustice of charging her with participating in a fraud.

That act cannot be criminal in a wife, because it was not communicated, which, if communicated, would be innocent. Admitting the representations of this letter to be untrue, they cannot be charged on the wife, since she disapproved of them and believed that it would not be sent in its exceptionable form.

So much is a wife supposed to be under the control of her husband that the law in this district will not permit her estate to pass by a conveyance executed by herself until she has been

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examined apart from her husband by persons in whom the law confides and has declared to them that she has executed the deed freely and without constraint. It would be a strange inconsistency if a court of chancery were to decree that the mere knowledge of a letter containing a misrepresentation respecting her property should produce a forfeiture of it, although she had not concurred in its statements, had dissuaded her husband from sending it, and believed he had not sent it.

Without discussing the conduct of Mr. Wheaton in this transaction, it is sufficient to say that it cannot affect the estate previously vested in his wife. The cause, therefore, must depend on the fairness and legality of the conveyance to her.

The allegation that the purchase money was derived from her private individual funds is supported by circumstances which may disclose fair motives for the conveyance, but which are not sufficient to prove that the consideration, in point of law, moved from her. It must therefore be considered as a voluntary conveyance, and if sustained, must be sustained on the principle that it was made under circumstances which do not impeach its validity when so considered.

The bill does not charge Mr. Wheaton with having been indebted in January, 1807, when this conveyance was made. The fact that he was indebted cannot be assumed. Indeed, there is no ground in the record for assuming it. The answers aver that he was not indebted, and they are not contradicted by any testimony in the cause.

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His inability to pay his debts in 1811 or 1812 is no proof of his having been in the same situation in January, 1807. The debts with which he was then overwhelmed were contracted after that date. This conveyance therefore must be considered as a voluntary settlement made on his wife by a man who was not indebted at the time. Can it be sustained against subsequent creditors?

It would seem to be a consequence of that absolute power which a man possesses over his own property that he may make any disposition of it which does not interfere with the existing rights of others, and such disposition, if it be fair and real, will be valid. The limitations on this power are those only which are prescribed by law.

The law which is considered by the plaintiff's counsel as limiting this power in the case at bar is the statute of 13 Eliz. ch. 5, against fraudulent conveyances, which is understood to be in force in the County of Washington. That statute enacts that

"for the avoiding and abolishing of feigned, covenous, and fraudulent feoffments . . . which feoffments . . . are devised and contrived of malice, fraud, covin, collusion, or guile, to the end, purpose, and intent to delay, hinder, or defraud creditors and others of their just and lawful actions . . . not only to the let or hindrance of the due course and execution of law and justice, but also to the overthrow of all plain dealing, bargaining, and chevisance between man and man. Be it therefore, declared . . . that all and every feoffment . . . made to or for any intent or purpose before declared and expressed shall be

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from henceforth deemed and taken only as against that person . . . whose actions . . . shall or might be in any wise disturbed . . . to be clearly and utterly void."

In construing this statute, the courts have considered every conveyance not made on consideration deemed valuable in law as void against previous creditors. With respect to subsequent creditors, the application of this statute appears to have

admitted of some doubt.

In the case of *Shaw v. Standish,* 2 Vern. 326, which was decided in 1695, it is said by counsel in argument

"that there was a difference between purchasers and creditors, for the statute of 13 Eliz. makes not every voluntary conveyance, but only fraudulent conveyances, void as against creditors, so that as to creditors it is not sufficient to say the conveyance was voluntary, but must show they were creditors at the time of the conveyance made, or by some other circumstances make it appear that the conveyance was made with intent to deceive or defraud a creditor."

Although this distinction was taken in the case of a subsequent purchaser, and was therefore not essential in the cause which was before the court, and is advanced only by counsel in argument, yet it shows that the opinion that a voluntary conveyance was not absolutely void as to subsequent creditors prevailed extensively.

In the case of *Taylor v. Jones,* 2 Atk. 600, a bill was brought by creditors to be paid their debts out of stock vested by the husband in trustees for the benefit of himself for life, of his wife for life, and afterwards, for the benefit of children. Lord

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Hardwicke decreed the deed of trust to be void against subsequent as well as preceding creditors.

There are circumstances in this case which appear to have influenced the chancellor and to diminish its bearing on the naked question of a voluntary deed being absolutely void, merely because it is voluntary.

Lord Hardwicke said

"Now in the present case, here is a trust left to the husband in the first place under this deed, and his continuing in possession is fraudulent as to the creditors, the plaintiffs."

His Lordship afterwards says

"And it is very probable that the creditors, after the settlement, trusted Edward Jones, the debtor, upon the supposition that he was the owner of this stock, upon seeing him in possession."

This case undoubtedly, if standing alone, would go far in showing the opinion of Lord Hardwicke to have been that a voluntary conveyance would be void against subsequent as well as preceding creditors, but the circumstances that the settler was indebted at the time and remained in possession of the property as its apparent owner were certainly material, and although they do not appear to have decided the cause, leave some doubt how far this opinion should apply to cases not attended by those circumstances.

This doubt is strengthened by observing Lord Hardwicke's language in the case of *Russell v. Hammond.* His Lordship said

"Though he had hardly known one case where the person conveying was indebted at the time of the conveyance

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that the conveyance had not been fraudulent, yet that, to be sure, there were cases of voluntary settlements that were not fraudulent, and those were where the persons making them were not indebted at the time, in which case subsequent debts would not shake such settlements."

It would seem from the opinion expressed in this case that *Taylor v. Jones* must have been decided on its circumstances.

The cases of *Stillman v. Ashdown* and of *Fitzer v. Fitzer & Stephens,* reported in 2 Atk., have been much relied on by the appellant, but neither is thought to establish the principle for which he contends. In *Stillman v. Ashdown,* the father had purchased an estate, which was conveyed jointly to himself and his son and of which he remained in possession. After the death of the father, the son entered on the estate, and the bill was brought to subject it to the payment of a judgment

against the father in his lifetime. The Chancellor directed the estate to be sold and one moiety to be paid to the creditor and the residue to the son.

In giving his opinion, the chancellor put the case expressly on the ground that this, from its circumstances, was not to be considered as an advancement to the son. He said too,

"A father, here, was in possession of the whole estate, and must necessarily appear to be the visible owner of it, and the creditor too would have had a right, by virtue of an *elegit,* to have laid hold of a moiety, so that it differs extremely from all the other cases. "

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In the same case, the Chancellor lays down the rule which he supposed to govern in the case of voluntary settlements. "It is not necessary," he says,

"that a man should be actually indebted at the time of a voluntary settlement to make it fraudulent, for if a man does it with a view to his being indebted at a future time, it is equally fraudulent, and ought to be set aside."

The real principle, then, of this case is that a voluntary conveyance to a wife or child, made by a person not indebted at the time is valid, unless it were made with a view to being indebted at a future time.

In the case of *Fitzer v. Fitzer & Stephens,* the deed was set aside because it was made for the benefit of the husband, and the principal point discussed was the consideration. The Lord Chancellor said "It is certain that every conveyance of the husband that is voluntary, and for his own benefit, is fraudulent against creditors." After stating the operation of the deed, he added, "Then consider it as an assignment which the husband himself may make use of to fence against creditors, and consequently it is fraudulent."

This case, then, does not decide that a conveyance to a wife or child is fraudulent against subsequent creditors because it is voluntary, but because it is made for the benefit of the settler, or with a view to the contracting of future debts.

The case of *Peacock v. Monk,* in 1 Vesey, turned on two points. The first was that there was a proviso to the deed which amounted to a power of revocation, which, the chancellor said,

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had always been considered as a mark of fraud, and 2., that, being executed on the same day with his will, it was to be considered as a testamentary act.

In the case of *Walker v. Burrows,* 1 Atk. 94, Lord Hardwicke, adverting to the stat. 13 Eliz., said, that it was necessary to prove that the person conveying was indebted at the time of making the settlement or immediately afterwards in order to avoid the deed.

Lord Hardwicke maintained the same opinion in the case of *Townshend v. Windham,* reported in 2 Vesey. In that case he said

"If there is a voluntary conveyance of real estate or chattel interest by one not indebted at the time, though he afterwards become indebted, if that voluntary conveyance was for a child, and no particular evidence or badge of fraud to deceive or defraud subsequent creditors, that will be good; but if any mark of fraud, collusion, or intent to deceive subsequent creditors appears, that will make it void; otherwise not, but it will stand though afterwards he becomes indebted."

A review of all the decisions of Lord Hardwicke will show his opinion to have been that a voluntary conveyance to a child by a man not indebted at the time, if a real and *bona fide* conveyance, not made with a fraudulent intent, is good against subsequent creditors.

The decisions made since the time of Lord Hardwicke maintain the same principle.

In *Stephens v. Olive,* 2 Bro.Ch. 90, Edward Olive, by deed dated 7 May,

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1774, settled his real estate on himself for life, remainder to his wife for life, with remainders over for the benefit of his children. By another deed of the same date, he mortgaged the same estate to Philip Mighil to secure the repayment of 500 pounds, with interest. On 6 March, 1775, he became indebted to George Stephens. This suit was brought by the executors of George Stephens to set aside the conveyance because it was voluntary and fraudulent as to creditors. The Master of the Rolls held

"that a settlement after marriage, in favor of the wife and children, by a person not indebted at the time, was good against subsequent creditors . . . and that although the settler was indebted, yet, if the debt was secured by mortgage, the settlement was good."

In the case of *Lush v. Williamson,* the husband conveyed leasehold estate in trust to pay, after his decease, an annuity to his wife for life, and after her decease the premises charged with the annuity for himself and his executors. A bill was brought by subsequent creditors to set aside this conveyance. The Master of the Rolls sustained the conveyance, and after expressing his doubts of the right of the plaintiff to come into court without proving some antecedent debt, said,

"A single debt will not do. Every man must be indebted for the common bills for his house, though he pays them every week. It must depend upon this whether he was in insolvent circumstances at the time."

In the case of *Glaister v. Hewer,* 8 Ves. 199, where the husband, who was a trader, purchased

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lands and took a conveyance to himself and wife and afterwards became bankrupt and died, a suit was brought by the widow against the assignees to establish her interest. Two questions arose: 1. whether the estate passed to the assignees under the statute of 1 James I, ch. 15, and if not, 2. whether the conveyance to the wife was void as to creditors.

The Master of the Rolls decided both points in favor of the widow. Observing on the statute of the 13th of Eliz., he said that the conveyance would be good, supposing it to be perfectly voluntary, "for," he added,

"though it is proved that the husband was a trader at the time of the settlement, there is no evidence that he was indebted at that time, and it is quite settled that under that statute, the party must be indebted at the time."

On an appeal to the Lord Chancellor, this decree was reversed because he was of opinion that the conveyance was within the statute of James, though not within that of Elizabeth.

In the case of *Battersbee v. Farrington,* 1 Swanst. 106, where a bill was brought to establish a voluntary settlement in favor of a wife and children, the Master of the Rolls said

"No doubt can be entertained on this case if the settler was not indebted at the date of the deed. A voluntary conveyance by a person not indebted is clearly good against future creditors. That constitutes the distinction between the two statutes. Fraud vitiates the transaction, but a settlement

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not fraudulent by a party not indebted is valid, though voluntary."

From these cases it appears that the construction of this statute is completely settled in England. We believe that the same construction has been maintained in the United States. A voluntary settlement in favor of a wife and children is not to be impeached by subsequent creditors on the ground of its being voluntary.

We are to inquire, then, whether there are any badges of fraud attending this transaction which vitiate it.

What are those badges?

The appellant contends that the house and lot contained in this deed constituted the bulk of Joseph Wheaton's estate, and that the conveyance ought on that account to be deemed fraudulent.

This fact is not clearly proved. We do not know the amount of his estate in 1807; but if it were proved, it does not follow that the conveyance must be fraudulent. If a man entirely unencumbered, has a right to make a voluntary settlement of a part of his estate, it is difficult to say how much of it he may settle. In the case of *Stephens v. Olive,* the whole real estate appears to have been settled, subject to a mortgage for a debt of 500 pounds, yet that settlement was sustained. The proportional magnitude of the estate conveyed may awaken suspicion and strengthen other circumstances, but, taken alone, it cannot be considered as proof of fraud. A man who makes such a conveyance necessarily impairs his credit, and

if openly done, warns those with whom he deals not to trust him too far; but this is not fraud.

Another circumstance on which the appellant relies is the short period which intervened between the execution of this conveyance and the failure of Joseph Wheaton.

We admit that these two circumstances ought to be taken into view together, but do not think that as this case stands they establish a fraud.

There is no allegation in the bill, nor is there any reason to believe, that any of the debts which pressed upon Wheaton at the time of his failure were contracted before he entered into commerce in 1809, which was more than two years after the execution of the deed. It appears that at the date of its execution, he had no view to trade. Although his failure was not very remote from the date of the deed, yet the debts and the deed can in no manner be connected with each other; they are as distinct as if they had been a century apart. In the case of *Stephens v. Olive,* the debt was contracted in less than twelve months after the settlement was made; yet it could not overreach the settlement.

These circumstances, then, both occurred in the case of *Stephens v. Olive,* and were not considered as affecting the validity of that deed. The reasons why they should not be considered in this case as indicating fraud are stronger than in England. In this district, every deed must be recorded in a place prescribed by law. All titles to land are placed upon the record. The person who trusts another on the faith of his real property,

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knows where he may apply to ascertain the nature of the title held by the person to whom he is about to give credit. In this case, the title never was in Joseph Wheaton. His creditors therefore never had a right to trust him on the faith of this house and lot.

A circumstance much relied on by the appellant is the controversy which appears to have subsisted about that time between the Post Office Department and Wheaton. This circumstance may have had some influence on the transaction, but the Court is not authorized to say that it had. The claim of the Post Office Department was not a debt. On its adjustment, Wheaton was proved to be the creditor instead of debtor.

It would be going too far to say that this conveyance was fraudulent to avoid a claim made by a person who was, in truth, the debtor where there is nothing on which to found the suspicion but the single fact that such a claim was understood to exist.

The claim for the improvements stands on the same footing with that for the lot. They appear to have been inconsiderable, and to have been made before these debts were contracted.

Decree affirmed.

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