Parish Vs. Murphree

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Decided On : 1851

Appeal No. : 54 U.S. 92

Appellant : Parish

Respondent : Murphree

Judgement :

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Parish v. Murphree

54 U.S. (13 How.) 92

APPEAL FROM THE DISTRICT COURT OF THE UNITED

STATES FOR THE NORTHERN DISTRICT OF ALABAMA

SYLLABUS

The statute of Frauds in the State of Alabama declares void conveyances made for the purpose of hindering or defrauding creditors of their just debts.

Where a person made a settlement upon his wife and children, owing at that time a large sum of money, for which he was soon afterwards sued, and became insolvent, these circumstances, with other similar ones, are sufficient to set aside the deed as being fraudulent within the statute.

This was a bill filed by the appellants, as creditors, to set aside a deed of settlement made by George Goffe upon his wife and daughter under circumstances which are detailed in the opinion of the court.

The district court sustained the deed upon the following ground.

"The true practical rule, which I think is fully authorized by the case of *Hinds' Lessee v. Longworth,* is laid down by the supreme court of New York in the case of *Jackson v. Town.* That rule is that"

"Neither a creditor nor a purchaser can impeach a conveyance *bona fide* made, founded on natural love and affection, free from the imputation of fraud, and when the grantor had, independent of the property granted, an ample fund to satisfy his creditors."

"Testing the case under consideration by this rule, we must look to the evidence to ascertain the amount and value of the property owned by George Goffe, as well as by the firm of G. & J. M. Goffe, at the period of the sale to Williams, and the conveyance of his notes for the benefit of Mrs. Goffe and her daughters, independent of the Blount Springs tract, and also to determine whether these deeds are made *bona fide* and free from the imputation of fraud."

The district court considered that the facts of the case brought it within the operation of this rule, and therefore upheld the deed.

The complainants appealed to this Court.

MR. JUSTICE Mc LEAN delivered the opinion of the Court.

The bill was filed to set aside a deed of settlement made by George Goffe, dated 12 September, 1837, on his wife and four daughters on the ground that it was made in fraud of creditors.

At the date above stated, Goffe and wife, by deed of general warranty, conveyed to Thomas Williams, Jr., six hundred and forty acres of land, including the "Blount Spring Tract" in Blount County, State of Alabama, for the consideration of sixty-four thousand dollars.

To secure the payment of the consideration, on the same day Williams executed a deed of trust on the same property to Joseph M. Goffe and George Goffe, for which notes bearing interest were given, five thousand dollars payable 1 March, 1838, five thousand payable on 1 October following, ten thousand 1 October, 1840, ten thousand 1 October, 1842, ten thousand 1 October, 1844, ten thousand 1 October, 1846, and fourteen thousand 1 October, 1848. Williams was to remain in possession of the land, and was authorized to sell parts of it to meet the above payments.

On the same day, George Goffe executed a deed of settlement signed also by Joseph M. Goffe, by which he appropriated to his four daughters the four ten thousand dollars notes above stated and the fourteen thousand dollars note to his wife in consideration of "the natural love and affection he had for them."

The complainants represent that George and J. M. Goffe did business together as merchants, and that on 2 February, 1837, they executed to them their promissory note for $5,169 payable in thirteen months, and on the same day another note payable in twelve months for five thousand one hundred and

sixty-eight dollars and twenty-five cents; also another note on 22 September, 1837, for $953.25, payable nine months after date. On all which notes judgments were obtained in the district court, amounting to the sum of $14,667.42, at

November term, 1841. Executions, having been issued on the judgments, were returned no property, and the defendants are alleged to be insolvent. And the complainants pray that George Goffe may be decreed to pay the amount due them, and on failure to do so that Williams may be decreed to pay the same, and in default thereof that the lands and real estate or debts assigned to Mrs. Goffe and her children may be converted into money by sale or otherwise so as to pay the sum due the complainants.

The defendants deny the allegations of the bill and aver that at the time of the settlement, the Goffes were able to pay their debts; that their assets exceeded their liabilities, and that the complainants have failed to collect their claims through their own negligence.

The statute of frauds of Alabama declares that

"Every gift, grant, or conveyance of lands &c.;, or of goods or chattels &c.;, by writing or otherwise, had, made, or contrived of malice, fraud, covin, collusion, or guile to the end or purpose to delay, hinder, or defraud creditors of their just and lawful actions, suits, debts &c.;, shall be from henceforth deemed and taken only as against the person or persons, his, her, or their heirs &c.;, whose debts, suits &c.;, by such means, shall or might be, in anywise disturbed, hindered, delayed, or defrauded, to be clearly and utterly void,"

&c.;

This statute appears to have been copied from the English statute of the 13 Elizabeth, and most of the statutes of the states, on the same subject, embrace substantially the same provisions. The various constructions which have been given to the statutes of frauds by the courts of England and of this country would seem to have been influenced to some extent from an attempt to give a literal application of the words of the statute, instead of its intent. No provision can be drawn so as to define minutely the circumstances under which fraud may be committed. If an individual, being in debt, shall make a voluntary conveyance of his entire property, it would be a clear case of fraud; but this rule would not apply if

such a conveyance be made by a person free from all embarrassments and without reference to future responsibilities. But between these extremes, numberless cases arise under facts and circumstances which must be minutely examined to ascertain their true character. To hold that a settlement of a small amount by an individual in independent circumstances and which if known to the public would not affect his credit is fraudulent would be a perversion

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of the statute. It did not intend thus to disturb the ordinary and safe transactions in society, made in good faith and which at the time subjected creditors to no hazard. The statute designed to prohibit frauds, by protecting the rights of creditors. If the facts and circumstances show clearly a fraudulent intent, the conveyance is void against all creditors, past or future. Where a voluntary conveyance is made by an individual free from debt, with a purpose of committing a fraud on future creditors, it is void under the statute. And if a settlement be made without any fraudulent intent, yet if the amount thus conveyed impaired the means of the grantor so as to hinder or delay his creditors, it is as to them void.

In the case before us, two of the debts, exceeding ten thousand dollars, were contracted in February, 1837, seven months before the settlement deed was executed. The other debt of nine hundred fifty three dollars and twenty five cents was contracted the 22d of September, ten days after the settlement. The property conveyed amounted to sixty-four thousand dollars, fifty-four thousand of which were covered by the settlement.

This conveyance is attempted to be sustained on the ground that Mrs. Goffe relinquished her dower to the tract conveyed, and that George Goffe, including the partnership concerns, held an aggregate property, after the settlement, amounting to the sum of sixty-five thousand dollars, and that the debts against Goffe individually and also against the partnership did not exceed twenty-five thousand dollars. It appears that in the fall of 1837 and in the early part of 1838, a large amount of his paper being due at New York, including the plaintiffs' was not paid. Suits were commenced against him, and early in 1839, his property, within the

reach of process was all sold. Goffe, it is proved, sent to Texas in 1839 by his brother ten negroes and other property worth about ten thousand dollars. In 1840, George Goffe went to Texas, where he afterwards died. Twenty-seven judgments were rendered against him, four of which were on notes dated 27 February, 1837, and four on notes given in September and October following, independent of the plaintiff's judgments.

These facts are incompatible with the assumption that Goffe's assets were more than double his liabilities. His aggregate of property must have been made of exaggerated values, and too low an estimate was made of his eastern debts. After the settlement and, as it would seem, before it was known to his eastern creditors, his purchases of merchandise were large and his business at home was greatly extended. Several stores were established by him in partnership with his brother. After having abstracted from his means fifty-four thousand dollars, this

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enlargement of his business shows a disposition to carry on a hazardous enterprise at the risk of his creditors. In less than three years after the settlement, judgments were obtained against the partnership for between twenty-five and thirty thousand dollars, no inconsiderable part of which had been contracted and was due at the time of the settlement. These facts prove that after the voluntary conveyance Goffe was unable to meet his engagements. Nothing can be more deceptive than to show a state of solvency by an exhibit on paper of unsalable property when the debts are payable in cash. Such property, when sold will not generally bring one fifth of its estimated value. And such seems to have been the result in the case before us.

But to avoid the settlement, insolvency need not be shown nor presumed. It is enough to know that when the settlement was made, Goffe was engaged in merchandising principally on credit; his means consisted chiefly of a broken assortment of goods, debts due for merchandise scattered over the country in small amounts, wild lands of little value, a few negroes, and a very limited amount of improved real estate, the value of which was greatly overestimated. On such a

basis no prudent man with an honest purpose and a due regard to the rights of his creditors could have made the settlement.

A conveyance under such circumstances, we think, would be void against creditors at common law, and we are not aware that any sound construction of the statute has been given which would not avoid it. *Sexton v. Wheaton,* 8 Wheat. 229; *Hinde's Lessee v. Longworth,* 11 Wheat. 199; *Hutchinson v. Kelley,* Robinson 123; *Miller v. Thompson,* 3 Porter 196.

The decree of the district court is

Reversed and the cause is remanded to that court with instructions to enter a decree for the complainants as prayed for in the bill.

ORDER

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Alabama, and was argued by counsel. On consideration whereof it is now here ordered and adjudged and decreed by this Court that the decree of the said district court in this cause be and the same is hereby reversed with costs, and that this cause be and the same is hereby remanded to the said district court with instructions to enter a decree for the complainants as prayed for in the bill.