

**Parker Vs. Phetteplace**

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**Court :** US Supreme Court

**Decided On :** 1863

**Appeal No. :** 68 U.S. 684

**Appellant :** Parker

**Respondent :** Phetteplace

**Judgement :**

Parker v. Phetteplace - 68 U.S. 684 (1863)

U.S. Supreme Court Parker v. Phetteplace, 68 U.S. 1 Wall. 684 684 (1863)

**Parker v. Phetteplace**

**68 U.S. (1 Wall.) 684**

*APPEAL FROM THE CIRCUIT COURT*

*FOR THE DISTRICT OF RHODE ISLAND*

## **SYLLABUS**

A question of fact arising upon a bill to set aside conveyances as made in fraud of creditors in which, though the court agreed that "there was ground of suspicion," it gives weight to an answer positively denying the facts and fraud charged, this

answer being supported by the positive testimony of a witness, who, though not a defendant in the case, was a principal actor in the transactions charged to be fraudulent. MILLER, J., dissenting.

The complainants below, appellants here, filed a bill as judgment creditors to set aside conveyances of the property of one Edward Seagrave, their debtor, and made, as they alleged, to hinder and delay the execution of their judgment.

Page 68 U. S. 685

The judgment was recovered in the Circuit Court of the United States, at November Term 1854, against the said Seagrave, for \$60,520.88, and costs, in a suit commenced on the 26th October previous. Execution was duly issued and part of the debt collected, the remainder still remaining due and unpaid. The conveyances charged to be fraudulent were executed by the judgment debtor on the 17th November, 1854, and the 4th January, 1855; the *first* to Phetteplace & Seagrave, a firm in Providence, Rhode Island, of certain real estate and stocks; the *second*, an assignment to one Updike, of all his real and personal property, in trust for the benefit of creditors, giving certain preferences specified in the assignment. The Seagrave of the firm of Phetteplace & Seagrave, was *George Seagrave*, a *brother* of Edward, the debtor. Both were residents of the same place, Providence.

It appeared from the proofs, that in the early part of 1853, Edward Seagrave, the debtor, Merrit & Co., and S. Harris, associated together to speculate in the purchase and sale of wool, the purchases to be made upon the credit of the paper of the parties, to be discounted at the banks. In this way, Seagrave's liabilities from acceptances and endorsements amounted, in July, 1853, to about \$176,000. Becoming alarmed at the magnitude of this debt, he made an arrangement with his associates, by which he sold out his interest in the business to them; and in consideration that they would pay all the outstanding paper, and would indemnify him against the same, he agreed to pay them \$33,500. This sum was paid and the indemnity given. These associates failed to take up the paper, and on the 4th February, 1854, went into insolvency. Seagrave stopped payment on this

partnership paper the same day, but continued his individual business until the 4th January, 1855, when he made the assignment to Updike for the benefit of his creditors. In the autumn of 1854, Phetteplace & Seagrave, the defendants below and appellees here, a firm in Providence, as already stated, finding the outstanding paper of the associates in the wool speculation, held by the banks, at a great discount, purchased of that paper to the amount of some \$45,000, at the

Page 68 U. S. 686

rate of from fifteen to twenty cents on the dollar, and afterwards applied to Edward Seagrave, the judgment debtor, one of the parties to the paper, for payment or security. The stocks and real estate conveyed for the security and payment of this indebtedness, together with the property assigned to Updike for the benefit of creditors, constitute the subject of complaint in the bill.

*The bill charged* that this outstanding paper against Edward Seagrave was purchased under an arrangement or understanding that he should have the benefit of the difference between the nominal value and the percent paid; that this proportion of the stocks and real estate transferred to the purchasers to secure the payment belong to him, and is held in trust for his benefit, and that the scheme was contrived for the purpose of hindering and defeating their execution, and further that the assignment to Updike was a part of the same fraudulent device.

*The answer denied positively the allegations of the bill,* and Edward Seagrave, who being now resident out of Rhode Island, was not made a defendant in the case, and was called by Phetteplace & Seagrave as a witness, testified in like positive manner that there was no understanding between him and Phetteplace & Seagrave, such as was alleged; that he had no interest in the paper, and that he had never received any profit from it.

The court below, after a full hearing of the case, dismissed the bill, which was the matter complained of here.

Page 68 U. S. 689

MR. JUSTICE NELSON delivered the opinion of the Court.

The case turns upon the answer to be given upon the evidence to this charge in the bill, as it is agreed that, according to the law of Rhode Island, the debtor in insolvent circumstances has a right to prefer creditors in the distribution of his estate, or in the application of it to the payment of his debts.

The charge is denied in the answers, and Edward Seagrave, the debtor, not made a party to the bill, who was called as a witness for the defendants, sustains the answers. He testified that there was no agreement or understanding between him and the firm of Phetteplace & Seagrave that he was to share in the profits arising out of the purchase of this paper, nor had he any interest in the same, nor has he ever received any share of the profits, nor do the purchasers hold any portion of them in trust for his benefit. His testimony upon this point, and which constitute the main issue in the case, is full and explicit in the denial of any participation, directly or indirectly, in the transaction. The evidence relied on on the other side to overcome the answers of the defendants, and the testimony of this witness, is circumstantial and argumentative.

The court below, on a very full consideration of all the proofs, came to the conclusion that the purchase of the paper by Phetteplace & Seagrave was an independent transaction, without any agreement or understanding with the debtor; that their title to the paper was absolute and unqualified, and that the debtor had no interest in the same, legal or equitable, present or future, and rendered a decree dismissing the bill. We agree that there is ground of suspicion that the purchase was made by the friends and for the benefit of Edward Seagrave, the debtor, but concur with the court that the weight

Page 68 U. S. 690

of the proofs is otherwise, and the bill properly dismissed. The question upon the assignment to Updike is so intimately connected with the transaction we have just examined, the conclusion arrived at in the one must control that in the other.

The principal point made against this assignment is that the preference in it in favor of Phetteplace & Seagrave for certain debts and liabilities, embrace the outstanding paper which they had purchased, and which was secured by the previous conveyances. But, on looking into the assignment, this interpretation is not warranted. The preference relates to other indebtedness and liabilities.

It is also said that Edward Seagrave embraced in this assignment the purchased outstanding paper which he took up, on giving security to the purchasers. But this was proper, as Merrit & Co., and Harris, who were on the paper, had bound themselves to indemnify Seagrave against it, and were, therefore, still liable upon it, and were to the assigns on the transfer of it to him.

*Decree affirmed.*

MR. JUSTICE MILLER dissented.

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