Washington University Law Review

Volume 1 | Issue 1

January 1915

Power of a Probate Court to Order the Sale of Lands Conveyed in Fraud of Creditors by an Intestate

POWER OF A PROBATE COURT TO ORDER THE SALE OF LANDS CONVEYED IN FRAUD OF CREDITORS BY AN INTESTATE.

When an intestate has conveyed land in fraud of creditors, the question arises as to whether the right to have such a conveyance set aside extends to the administrator of the deceased as well as to the creditors. If the administrator is to be regarded as a mere personal representative of the intestate, he stands in the shoes of the intestate, and the conveyance must be held good as to him.[1] The cases holding to this view are very strong in point of logic. It is almost universally agreed that after the conveyance has been set aside, the land sold, and the creditors paid, the surplus goes, not to the heirs of the fraudulent grantor, but to the grantee or his heirs, because as between grantor and grantee the conveyance is valid.[2] Therefore, since the proceeds do not constitute a part of the estate, the administrator is not entitled to have any control over them at any time. The early Missouri cases are in accord with this theory.[3]

In many states, however, the view has prevailed that the administrator is the representative of the creditors as well as the deceased. As such he is entitled to sue to have fraudulent conveyances set aside for the benefit of the creditors.[4] This is clearly the better view, and it is now the weight of authority. It expedites justice for all parties to have the administrator and the probate court settle all matters relating to the estates of intestates.

After the fraudulent conveyance has been set aside, there is the further consideration as to whether the probate court has jurisdiction over the sale of the land to satisfy the debts of the intestate. This question has not been definitely passed on in Missouri until the recent case of Byrd v. Hall, *infra* (not yet reported), decided in the September, 1915, term of the United States Circuit Court

[1]Richardson v. Ranson, 99 Ill. App. 258; Roberts v. Nicklies, 9 Ky. Law Rep. 651; Lemp Brewing Co. v. La Rose, 20 Tex. Civ. App. 575.

[2]McLean v. Weeks, 61 Me. 277, 280; Bank of U. S. v. Burke, 4 Blackf. 141, 143.

[3]George v. Williamson, 26 Mo. 190; Brown's Administrator v. Finley, 18 Mo. 375.

[4]McLean v. Weeks, 61 Me. 277, 280; Martin v. Root, 17 Mass. 222, 228; McKnight v. Morgan, 2 Barb. 171; Mallow v. Walker, 115 Ia. 238; Matthews v. Hutchins, 68 N. H. 412.

of Appeals. But the dicta of several decisions have been against giving the probate court jurisdiction over such a sale, for the reasons stated above.[5]

In the case of Byrd v. Hall the court distinguishes between the case in hand and the earlier Missouri cases, claiming that both can stand, but the case comes perilously near to making new law for Missouri, or will, at least, if the Missouri Supreme Court follows the decision. This case had a history of some forty-five years. In May, 1871, Wm. S. Sugg conveyed land to his brother in fraud of creditors. In August, 1880, the creditors obtained a judgment from the circuit court setting this conveyance aside. After several appeals to the Supreme Court and subsequent retrials the decree setting aside the conveyance was confirmed.[6] After the decree of 1880 the administrator of the estate of Wm. S. Sugg obtained from the probate court an order for the sale of the land. The plaintiffs in this case, who were the defendants in the previous litigation, are the heirs of the fraudulent grantee, Wylie P. Sugg. They wish to eject the defendants, who hold under the probate court sale. On a previous appeal to the Circuit Court of Appeals the case was sent back for a rehearing, the court leaning strongly towards the view that the probate court sale was void.[7] But in this last appeal the sale was held good. The court seem to base their decision chiefly on certain sections of the Revised Statutes of Missouri which, they claim, were not followed in the case of Zoll v. Soper, relied upon by the plaintiffs as authority for the proposition that the sale by the probate court was void. One of these sections provides that every conveyance of lands made with the intent of hindering or defrauding creditors shall be utterly void as to them.[8] The other section provides, in effect, that no execution shall issue on any judgment against an intestate or his administrator, constituting a demand against the estate, but that all such demands shall be under the jurisdiction of the probate court.[9] The administrator, say the court, is the representative of the creditors. The purpose of the statutes regarding probate courts is to give them jurisdiction over all affairs relating to the estates of decedents. According to the wording of the statute the conveyance of land in fraud

[5]George v. Williamson, 26 Mo. 190; Hall v. Callahan, 66 Mo. 316; Zoll v. Soper, 75 Mo. 460.
[6]St. Francis Mill Co. v. Sugg, 206 Mo. 148.
[7]Byrd v. Hall, 196 Fed. 762.
[8]Revised Statutes of Missouri, 1889, Sec. 5170.
[9]Revised Statutes of Missouri, 1879, Sec. 2370.

of creditors is void as to them, not voidable. The suit to set aside the fraudulent conveyance does not result in a retransfer of the title to the fraudulent grantor, it merely clears up a cloud on his original title. As to the creditors, the title never left the fraudulent grantor. Therefore, the land was in the possession of Wm. S. Sugg at the time of his death, his administrator could make use of it to satisfy his debts, and the probate court had power to order the sale. The creditors in this case had judgments which were liens on the land of the intestate. There, say the court, lies the distinction between this case and Zoll v. Soper, *supra,* and Hall v. Callahan, 66 Mo. 316. These cases held that the probate court could not order the sale of lands fraudulently conveyed to satisfy the *general debts of the estate.* But the distinction drawn is very hard to follow, and it is clear that the court are strongly in favor of the proposition that the probate court should have power to order the sale of lands fraudulently conveyed to satisfy all debts of the estate. As an abstract proposition, this conclusion has everything in its favor, but as a matter of Missouri law, it does not seem to be in line with the spirit, at least, of the early Missouri cases.

Sanborn, J., dissented vigorously on the ground that the conveyance was voidable and not void. Wm. S. Sugg, therefore, did not die seised of the land and the probate court had no jurisdiction over it. Nearly all of the Missouri cases hold that the administrator is solely the representative of the decedent. This land therefore could never become a part of the estate, even for the satisfaction of debts, because, as between grantor and grantee, the conveyance was good. The creditors alone can have the conveyance set aside and obtain an order for the sale of the land. The proper forum for them is the circuit court.