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PRACTICE AND PROCEDURE - JOINDER OF PARTIES AND CAUSES UNDER THE UNIFORM FRAUDULENT CONVEYANCE ACT

PRACTICE AND PROCEDURE — JOINDER OF PARTIES AND CAUSES UNDER THE UNIFORM FRAUDULENT CONVEYANCE ACT — The plaintiff sought, in one suit, to recover the amount of a promissory note from the maker and to attack a transfer of property by the maker to her brother, alleged to be a fraud on the maker's creditors. The maker and transferee were made defendants. The transferee demurred to the complaint on the ground that the two defendants had essentially different liabilities and so could not be joined in one action, under the South Dakota code.[1] *Held*, that section 9 of the Uniform Fraudulent Conveyance Act [2] permits the plaintiff to proceed in one action for a judgment

[1] S. D. Comp. Laws (1929), sec. 2371, provides that certain causes of action may be united in one complaint but that the causes so joined "must affect all the parties to the action."

[2] Section 9 of the Uniform Fraudulent Conveyance Act (S. D. Comp. Laws (1929), sec 2044-I) provides:

"(1) Where a conveyance or obligation is fraudulent as to a creditor, such creditor, when his claim has matured, may, as against any person except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase, or one who has derived title immediately or mediately from such a purchaser,

"(a) Have the conveyance set aside or obligation annulled to the extent neces-

on his debt and for a decree setting aside a fraudulent transfer by his debtor. *Corson Lumber Co. v. Millard*, (S. D. 1933) 249 N. W. 686.

The South Dakota court does not discuss the defendant's argument that since the claim for recovery of the debt affects the debtor only, while the bill to set aside the transfer affects both the debtor and the transferee, the complaint joined two causes of action which do not "affect all the parties to the action" as required by the code. The rule at common law did not permit the joinder of causes of actoin where the parties, both plaintiff and defendant, were not the same in all causes joined.[3] And such is held quite generally to be the rule under code provisions like that in South Dakota.[4] But does a complaint which prays for judgment on a debt and seeks to annul a fraudulent transfer by the debtor contain two causes of action? It has been held that such a complaint embodies two causes of action and is demurrable for misjoinder, as the causes joined do not have the same parties.[5] On the other hand, there is authority for the view that a creditor's bill is merely an "equitable levy," supplementary to the action for recovery of the debt.[6] If such be true, it can be argued that the bill to set aside the fraudulent transfer is not a separate cause of action, and that the rule against the joinder of causes not affecting all the parties would not apply. The West Virginia court has held that the claim for the debt and to set aside the transfer constitute but one cause of action.[7] No reason was given for this result. If the view that there are two causes of action be taken, does section 9 of the Uniform Act justify such a joinder? The statute does not permit a joinder in express terms.[8] However, it may be said to have that effect by implication,[9]

sary to satisfy his claim, or

"(b) Disregard the conveyance and attach or levy execution upon the property conveyed.

"(2) A purchaser who without actual fraudulent intent has given less than a fair consideration for the conveyance or obligation, may retain the property or obligation as security for repayment."

[3] Blume, "A Rational Theory for Joinder of Causes of Action and Defences, and for the Use of Counterclaims," 26 MICH. L. REV. 1 (1927).

[4] Lockhart v. Christian, 29 N. M. 143, 219 Pac. 490 (1923); Drainage Dist. v. O'Neil, 109 Neb. 552, 191 N. W. 685 (1922); CLARK, CODE PLEADING, sec. 68 (1928).

[5] Faivre v. Gillman, 84 Iowa 573, 51 N. W. 46 (1892). This case was decided under a statute permitting the joinder of causes of action "provided that they be by the same party and against the same party in the same rights."

[6] Pierce v. United States, 255 U. S. 398, 41 Sup. Ct. 365 (1920); Freedman's Savings and Trust Co. v. Earle, 110 U. S. 710, 4 Sup. Ct. 226 (1883); Fink v. Patterson, 21 Fed. 602 at 607 (1884), where the bill to set aside the fraudulent conveyance was said to be "in execution of his judgment or decree"; GLENN, FRAUDULENT CONVEYANCES, sec. 81 (1931).

[7] Tuft v. Pickering, 28 W. Va. 330 (1886).

[8] See note 2, supra.

[9] "Certainty would, indeed, have been promoted if it had been said in so many words that a judgment and a lien should no longer be essential. We think it said as much, however, by fair and natural implication. The creditor may reject the aid of equity, and levy attachment or execution at law . . . as he might before the statute. He may seek the aid of equity, and without attachment or execution, may establish his debt whether matured or unmatured, and challenge the conveyance in the compass of a

since, in permitting a wrongful transfer of property to be annulled by a simple creditor, the statute must mean that a judgment on the debt may be obtained in the same proceedings, in order that the property may be subjected to payment of the judgment. Several cases have reached the result of the principal case on the basis of section 9[10] and similar statutes.[11] It may be said in support of the decision of the South Dakota court that it promotes the speedy administration of justice by permitting one suit where two might otherwise be necessary,[12] and is the necessary interpretation of section 9 of the Uniform Act.

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single suit." Cardozo, J., in American Surety Co. v. Conner, 251 N. Y. 1 at 7, 166 N. E. 783 at 785 (1929).

[10] Hartford Accident and Indemnity Co. v. Jirasek, 254 Mich. 131, 235 N. W. 836 (1931); American Surety Co. v. Conner, 251 N. Y. 1, 166 N. E. 783 (1929); Virgil State Bank v. Wahl, 56 S. D. 318, 228 N. W. 392 (1929).

[11] Citizens Nat. Bank v. Watkins, 126 Tenn. 453, 150 S. W. 96 (1912); Douglass Cotton Oil Co. v. Alabama Machinery and Supply Co., 205 Ala. 51, 87 So. 342 (1920).

[12] Simonton v. Simonton, 33 Idaho 255, 193 Pac. 386 (1920).