Washington University Law Review

Volume 6 | Issue 2

January 1921

Schroeder v. Gohde

James Thornton Dolan
Washington University School of Law

SCHROEDER v. GOHDE

The recent case of Shroeder v. Gohde, 123 Minn. 459, seems to be decided correctly according to the statutes in existence in Minnesota, but the decision and particularly the annotation appended to the report of the case in 6 A. L. R. 571 obviously are misleading, inasmuch as they state as an unqualified proposition of law that which must be dependent on the statutory provisions of each State.

The case has to do with the rights of creditors in funds resulting from the sale of homestead property. The facts were these: About 1890, Henry C. Gohde bought 80 acres of land with money furnished by his wife, Louise. She believed the deed was made to her, and did not learn that it was made to her husband until long afterwards. In 1910, the defendants, Henry C. and Louise Gohde, contracted to sell the land to one Morell. To secure the consent of Louise to the bargain, defendant Henry agreed that all the proceeds should be paid to her. This action is by the creditors of Henry to subject the proceeds of the sale to the payment of an unsatisfied judgment. The Court held that the agreement that Louise should receive the proceeds of the sale was valid, and that the transaction was not fraudulent as to the creditors of Henry. "The controlling fact in such a case," said the Court, "is that creditors are no worse off than they were before. They had no claim upon the homestead property, and the agreement which these parties made was of no concern to them. 'Creditors have no right to complain of the dealings with property which the law does not allow them to apply on their claims.' Anderson v. Odell, 51 Mich. 492." No reference is made to any Minnesota statute as controlling the decision, but on the contrary, we are likely to be led to believe that the rule laid down that such transactions are not fraudulent as to creditors is one that is applicable to all like cases.

It seems, however, that the Minnesota statutes did control

the decision. Section 5676 of the General Statutes of Minnesota (1893) provides that: "The homestead of the deceased * * * * shall descend free from any testamentary devise * * * and free from all debts or claims upon the estate of the deceased, as follows: (1) If there be no child nor lawful issue of any deceased child living, to the surviving husband or wife. (2) If there be a child or the issue of any deceased child living, and a surviving husband or wife, to such husband or wife during the term of his or her natural life, remainder to the child or children and the issue of any deceased child by right of representation. * * * " Since by express statutory enactment the homestead in Minnesota descends free from all debts against the estate of the deceased, it may be properly said that the creditors "had no claim upon the homestead property and the agreement which these parties made (as to the disposal of the land and its proceeds) was of no concern to them." But we might have wished that the Court had placed the decision upon the ground of the statute instead of laying down the bare statement that such agreements are valid and not fraudulent as to creditors.

The annotation to Schroeder v. Gohde, as reported in 6 A. L. R. 571, is more misleading. The author advances as the rule the bald statement that "an agreement between the husband and wife that the wife shall receive the proceeds of a sale of homestead property, in consideration of her joinder in a conveyance thereof is not fraudulent as to creditors of the husband," and he then proceeds to a discussion of cases from California, Iowa, Missouri, Oklahoma, Texas, and Vermont as sustaining the proposition.[1] He seems, however, to have lost sight of the fact that whether such disposition of the proceeds of the sale of the homestead as in Schroeder v. Gohde is fraudulent or not as to creditors may depend upon the character of the homestead and the rights of creditors

1. The cases discussed are: Wetherly v. Straus, 93 Cal. 283; Officer v. Evans, 48 Iowa 557; Jones v. Brandt, 59 Iowa 332; Stinde v. Behrens, 81 Mo. 254; Kershaw v. Willey, 22 Okla. 677; Blum v. Light, 81 Tex. 414; Allen v. Hall, 1 Tex. App. Civ. Cases (White & W.) 755; Gatewood v. Scurlock, 2 Tex. Civ. App. 98; Keyes v. Rines, 37 Vt. 260.

therein as defined by the statutes of the different states, for he cites cases where the creditors have no right in the homestead and therefore cannot complain of the manner of its disposition. It is difficult to see why in States where the homestead is a mere present right of exemption from attachment and sale under execution and the homestead does not descend free from claims against the estate of the deceased, a conveyance of the *fee* would not deprive the creditor of a right to have the residue left after the termination of the exemption—the so-called "reversionary interest"—applied to the liquidation of his claims and thus defraud him of his right to proceed against the reversion.

It is well settled that under certain statutes the homestead right is a mere exemption and does not vest the person entitled thereto with an absolute estate in fee in the homestead property. In Carrigan v. Rowell, 96 Tenn. 185, the Court in construing Sections 2943 of the Code of Tennessee (Milliken & Vertrees) said, "The homestead is a mere right of occupancy, and the remainder or reversion therein may be sold, subject to the homestead." In Hanby's Adm'r v. Henritze's Adm'r, 85 Va. 177, the Court under the Code of 1873, Section 8, Ch. 183, held that after the expiration of the exemption, the homestead may be subjected by creditors. Under the authority of Art. 10, Section 3, of the Constitution of the State of Alabama, the Court in Miller v. Marx, 55 Ala. 322, held that the widow took no title to the premises, and that the property reverted to the estate whenever the exemption ceased. A similar conclusion was reached in Evans v. Evans, 13 Bush, 587.

The difference between the fee simple homestead and the mere exemption right of homestead, and the consequent difference in the rights of creditors with respect thereto, a distinction that the author of the A. L. R. annotation seems to have failed to grasp, is brought out in the case of Shaeffer v. Beldsmeier, 107 Mo. 314: "Under former statutory provisions relating to homesteads, the land covered by a homestead was wholly exempt from all liability for debt, exempt from attachment and

execution. The husband took a fee-simple which passed to his widow and minor heirs. This being the case, it was properly ruled that such a thing as a fraudulent conveyance of a homestead could not exist. * * * But a radical change occurred in the homestead act by reason of the amendment of 1875. R. S. 1889, Sec. 5439. The *fee* no longer passes to the original occupant, nor, on his decease, to his widow and heirs; but an estate limited to the death of the widow and the attainment of the majority of the youngest child. * * * To the extent of whatever interest then the decedent had in the land over and above a homestead estate, as distinguished from a fee-simple estate, to that extent his conveyance, if fraudulent, would be void as against * * * an existing creditor, and the latter would be entitled to set aside such conveyance by appropriate proceedings and to have such reversionary interest applied to the satisfaction of his judgment lien."

It is quite evident, then, that the rule laid down without qualification in Schroeder v. Gohde and in the annotation of the case in 6 A. L. R. is stated too broadly, inasmuch as the conclusions reached therein must depend entirely upon the character of the homestead right. If such right is a mere exemption of the property from direct liability for debts during the life or minority of the parties for whose benefits the homestead is instituted, and the reversionary estate is still liable for the debts of the head of the family, clearly the rule that such a transaction as occurred here would not be fraudulent does not apply, for the creditor would be deprived of the right to look to the reversion for the satisfaction of his claims. As both the report of the case and the annotation thereof are likely to mislead one to assume that an agreement between the husband and wife that the wife shall receive the proceeds of a sale of homestead property, in consideration of her joinder in a conveyance thereof would not be fraudulent as to the creditors of the husband in any jurisdiction, it seems that such report and annotation should not be allowed to go unchallenged.

JAMES THORNTON DOLAN, '22.