

No. 4215. Equity.

Francis H. Creedoff owned at the time he executed the deed of trust to Mr. Fink, was conveyed by that deed to the trustee for the benefit of Creditor. Nothing passed, upon Mr. Creedoff's death, to his executor or Administrator, and the latter would not have been a proper party to represent any residuary interest which Francis H. Creedoff might have had in the mortgage now in controversy, because the whole of that interest ~~was~~ ~~was~~ it was developed under the deed of trust upon Mr. Fink as trustee, and consequently he was the proper party to be brought in in place of his grantor. But whether this be or not is practically immaterial, for if it was an error to join Mr. Fink that error can not defeat the rights of the plaintiff in this proceeding and would in no court justify the dismissal of the entire Bill.

Fourthly, Have the comments of the Bill with respect to the insolvency of Francis H. Creedoff at the time of the execution or the delivery of the assignment and release, been sustained by the evidence? According to the testimony in the record there is little room to doubt that Francis H. Creedoff was hopelessly insolvent on the first and third days of December 1894, the dates upon which respectively the release and the assignment on the Mortgage purport, on their face, to have been executed. The testimony of Dr. Haring, Cashier of the Union National Bank of Westminster and of other witnesses; and the evidence furnished by the exhibits filed with the causes, demonstrate this beyond dispute.

Perhaps it may not be out of place, at this point, to define with more particularity the meaning of the term insolvency as applied to debtors, proceeded against in cases arising under the Statute of 13 Elizabeth, Chapter 5, according to the definition given by the Supreme Court of the United States in Trust Co. v. American, 13 Wallace 220. Insolvency denotes the insufficiency of the entire property and assets of an individual to pay his debts. In Hopkins v. Hannan, 22 Blaine 222, a bankrupt in no very affluent circumstances and in debt at the time conveyed a large part of his estate in trust for his wife and children, and the Chancellor took