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Bogan v. Cleveland.

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BOGAN V. CLEVELAND.

**HOMESTEAD:** *Conveyance of not fraudulent.*

The homestead of a debtor not being subject to the lien of a judgment, or to sale under execution, his conveyance of it, although executed with a bad motive, deprives his creditors of no right, and is therefore not fraudulent.

APPEAL from *Washington* Circuit Court in Chancery.

J. M. PITTMAN, Judge.

The conveyance which this suit seeks to avoid was executed in 1884. The Constitution of 1874, Article 9, Section 3, provides that a homestead "shall not be subject to the lien of any judgment, or decree of any court, or to sale under execution \* \* \* \* except such as may be rendered for the purchase money, or for specific liens, laborers' or mechanics' liens for improving the same, \* \* \* \* or against executors, administrators, guardians, receivers, attorneys for moneys collected by them and other trustees of an express trust for moneys due from them in their fiduciary capacity."

*A. M. Wilson*, for appellant.

The sale was made in good faith, and from a good motive,

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and was not in fraud of creditors. The land was his homestead, and not subject to execution or sale for his debts. *Act March, 1887, p. 90.*

*C. R. Buckner, Sam H. West and B. R. Davidson*, for appellees.

The judgment of appellees had become a lien on the land before Mrs. Bogan made a payment on it, if she ever did make one. *Const., Art. 9, sec. 9; 30 Ark., III.*

She was not an innocent purchaser; she had notice; and the proof shows the conveyance made for the express purpose of defrauding creditors. *23 Ark., 258; 45 id., 520; 32 id., 251.*

The act of March, 1887, has no application; it applies only to execution sales. If the homestead right is not asserted in the manner prescribed by law, the right is waived. *33 Ark., 454; 28 id., 485.*

PER CURIAM. The appellees, judgment creditors of one Bryant, brought this suit, seeking to cancel for fraud a conveyance of land from him to the appellant. The land constituted the homestead of the debtor when the conveyance was made. It was not subject to the lien of a judgment, or to sale under execution. Creditors could not be injured by the conveyance. The debtor may have executed the conveyance with a bad motive, but it deprived his creditors of no right, and was therefore not fraudulent. *Bump's Fraud Con., p. 245; Wait Fraud Con., sec. 71; Cammack v. Lovett, 44 Ark., 180.*

The judgment is reversed and cause remanded with instructions to dismiss the bill.

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