DUNNING v. PERKINS.

Case No. 4,180.
{2 Biss. 421.}[1]

Circuit Court, N. D. Illinois. Jan., 1871.

BANKRUPTCY—SECURED CREDITOR—RIGHT OF ASSIGNEE TO SECURITIES.

1. When a merchant stops payment on his commercial paper, and the holder commences suit thereon, to which there is no defense, he has reasonable cause to believe the debtor is insolvent.
2. If afterwards, knowing that the debtor is obliged to ask extensions, he, within the time designated in the act, takes security and dismisses the suit, then the securities can be recovered by the assignee in bankruptcy.

In bankruptcy. Replevin by Seth M. Dunning, assignee of John D. Rice, bankrupt, for securities deposited with defendants by the bankrupt as collaterals. On the 26th of June and 11th of August, 1858, the defendants, as attorneys for Hendrickson, Doll and Richards, commenced, in the superior court of Chicago, suits against John D. Rice, a merchant then doing business in Chicago, upon his promissory notes then dishonored. Rice had no defense to the notes, and early in September went to the defendants, stated to them that he was indebted in the aggregate to the amount of about five thousand dollars, and that although he could not meet his paper as it came due, if he could procure an extension from his creditors by giving them security, he could pay all he owed. On the 14th of September he deposited with the defendants the securities, to recover which this suit was brought and thereupon they dismissed their suits against him. On the 13th of December in the same year he filed his petition in bankruptcy in this district, was afterwards adjudged a bankrupt, and on the 19th of February, Dunning was appointed assignee. Case tried by the court.

Charles L. Easton, for plaintiff.

J. A. Cram, for defendants.

DRUMMOND, Circuit Judge. The fact that the two notes given by Rice, he being a merchant or trader within the meaning of the bankrupt act, were not paid, was enough to excite distrust as to his pecuniary condition. When a creditor is compelled to bring suit against a merchant for nonpayment of notes bearing the character of commercial paper, and to which there is no defense, that is sufficient to create a suspicion in his mind that the debtor is insolvent, and it is the duty of the court under such circumstances to scan closely all methods of obtaining a preference by one creditor over another. The only argument that can be used in behalf of the defendants is that they had no reasonable ground for supposing that Rice was insolvent. But if they believed that he had property sufficient to liquidate all

his indebtedness, why take this security? I do not mean that because a man takes security it always follows that he has reason to believe the debtor insolvent; but when, as in this case, the creditor has brought suit upon commercial paper, to which there is no defense, and then by arrangement with the debtor the suit is dismissed and security is taken, and the fact is that the debtor at the time was insolvent, this makes out a strong case. If a creditor under such circumstances takes security, he does so at his peril. The plaintiff must recover.

[1] {Reported by Josiah H. Bissell, Esq., and here reprinted by permission.}