FLETCHER ET AL. V. MOREY.

Case No. 4,864.
{2 Story, 555.}[1]

Circuit Court, D. Massachusetts. Oct. Term, 1843.

EQUITABLE LIEN FOR ADVANCES—BANKRUPTCY—RIGHTS OF ASSIGNEE—ACT OF 1841—EQUITY JURISDICTION OF FEDERAL COURTS—MORTGAGE—FRAUDULENT INTENT.

1. The bill, in this case, asserted an equitable lien against certain shipments, and the proceeds thereof, in the hands of the assignee of James Read & Co. as security for advances made by the plaintiffs, under an agreement with James Read & Co. by which Read & Co. were authorised to make drafts on the plaintiffs in payment for merchandise, the said merchandise being pledged and hypothecated to the plaintiffs as collateral security for their advances. It was *held*, that the lien was good.

2. So, also, duties and charges upon the shipments having been paid by Messrs. Read & Co.; it was *held*, that they were not to be deducted from the value of the shipments, or the proceeds in the hands of the assignee, except in respect to such goods as came into the hands of the assignee, charged with those duties, since the bankruptcy.

3. The assignee in bankruptcy takes the property and rights of the bankrupt, subject to all the liabilities and with all the rights, that would attach to them in the hands of the bankrupt; the only exception is in case of fraud.

{Cited in Gibson v. Warden, 14 Wall. (81 U. S.) 248.}

4. Where a lien, or equitable claim, constituting a charge in rem, is a matter of agreement, it will be enforced in equity, not only upon real estate, but also upon personal estate, or money in the hands of a third person; and against the party himself, or his personal representatives, or persons claiming under him, or assignees in bankruptcy.

[Cited in Lawrence v. Dana, Case No. 8,136; Holly Manuf'g Co. v. New Chester Water Co., 48 Fed. 892; Riddle v. Hudgins, 58 Fed. 492.]

[Cited in Jones v. Richardson, 10 Metc. (Mass.) 489.]

5. The proviso in the second section of the bankrupt act of 1841, c. 9 [5 Stat. 440], embraces all liens, equitable and legal, which are valid by the lex loci contractus, and is not restricted to such as can be enforced by state laws.

[Cited in Zollar v. Janvrin, 49 N. H. 117.]

6. An equitable lien is valid by the laws of Massachusetts, although no remedy for its enforcement is provided by the state jurisprudence.

[Cited in The Menominie, 30 Fed. 202.]

7. The equity jurisdiction and equity jurisprudence administered in the courts of the United States are coincident and coextensive with that exercised in England, and are not regulated by the municipal jurisprudence of the particular state, where the court sits.

[Cited in Gindrat v. Dane, Case No. 5,455.]

8. Liens and mortgages of personal property are perfectly good, as between the parties, and against creditors, although the possession remain with the owner or mortgagor, if there be no fraudulent intert. The same rule applies to sales of personal property.

Bill in equity brought by Edward Fletcher, James Alexander, Charles Kerr, Charles Dashwood Bruce, Christopher Pearse, and Charles Philip Fletcher, of London, England, merchants and copartners negotiating under the style and firm of Fletcher, Alexander & Co., bring this their bill against George Morey, of Boston, as assignee of the joint estate and effects of James Read & Co. The bill sets forth, in substance, that on or about the thirtieth day of December, 1840, James Read, of Boston, in Massachusetts, and Horace Hall, of Charlestown, in New Hampshire, merchants and joint partners negotiating at Boston aforesaid under the firm of James Read & Co., applied to Thomas B. Curtis, the duly authorized agent of the plaintiffs on that behalf, and requested him as the said agent, to grant unto them a letter of credit upon the usual terms and conditions, and thereupon the said Curtis being there unto duly authorized, did grant unto them a letter of credit bearing date on the thirtieth day of December, 1840, addressed to the plaintiffs by their said partnership name and style, of which the following is a true copy: "Boston, December 30, 1840. Messrs. Fletcher, Alexander & Co., London. Gentlemen: This letter will be forwarded to you by Messrs. James Read & Co., a firm of the first standing in this city. These gentlemen have orders now in progress of execution towards which they would like a credit with your good selves. Believing that I cannot introduce to you better correspondents, I hereby request that you authorize such parties as they may advise you, to draw on their account for sums not exceeding ten thousand pounds in all. Drafts drawn in payment for goods to be shipped after the reception of this letter to be accompanied by

bills of lading, and merchandise so purchased and shipped from Liverpool to be forwarded through your house there. Tour ob't serv't (Signed), T. B. Curtis. For £10,000." That at the same time that the said letter of credit was granted, the said James Read & Co. entered into a contract in writing with the plaintiffs, of which the following is a true copy: "Boston, December 30, 1840. Received the original of the annexed letter of credit for ten thousand pounds, in consideration whereof, we, James Read & Co., do hereby agree with Messrs. Fletcher, Alexander, & Co. to provide in London, previous to the maturity of the bills, sufficient funds to meet the payment of whatever may be negotiated by virtue thereof, with commission, on the same one per cent. and also to give security here for the same at any time previous thereto, if required by them or their agent, and all property, which shall be purchased by means of the above credit and the proceeds thereof, and the policies of insurance thereon, together with the bills of lading, are hereby pledged and hypothecated to them as collateral security for the payment as above promised, and held subject to their order on demand, with authority to take possession and dispose of the same at discretion for their security or re-imbursement. For all payments, settlements and recoveries in the United States, growing out of this credit, the pound sterling is to be calculated at the current rate of exchange, existing at the time of such settlement. Interest to be charged at the rate of six per cent. per annum. (Signed) James Read & Co." And the said James Read & Co. having signed the said contract, and delivered the same to the said Curtis, and having received from him the said letter of credit, proceeded to act thereon, and from time to time through their duly authorised agents in that behalf, drew bills on the plaintiffs in London, which were accepted and paid by them under the said letter of credit; and funds to pay the same were duly provided by the said James Read & Co. until the twenty-sixth day of March, 1841, when the said letter of credit having been altogether used and executed, and bills amounting to the sum of ten thousand pounds sterling, mentioned therein as not to be exceeded, having been drawn, the said James Read & Co. applied to the plaintiffs' said agent, and desired to renew or extend the said letter of credit and their said contract with the plaintiffs, so as to enable them to continue to use the said letter of credit, and thereupon, by mutual agreement between the said James Read & Co., and the plaintiffs' said agent, the following endorsement was made upon the said letter and signed

by the plaintiffs' said agent, namely: "Boston, March 26, 1841. It is agreed that this letter of credit shall continue in force for one year from its date, and for any sums not exceeding ten thousand pounds at any one time, unless sooner annulled. T. B. Curtis, Attorney for Fletcher, Alexander & Co." And at the same time the following endorsement was made on the said contract by the said James Read & Co.: "Boston, March 26, 1841. The credit for which this obligation was given being extended per endorsement on the annexed copy thereof, we agree that the obligation shall be binding in like manner for such extension, say for any sum not exceeding at any one time ten thousand pounds sterling. James Read & Co."

That after the said letter of credit had been enlarged by the endorsement aforesaid, the said James Read & Co. proceeded to, and did authorize certain persons doing business under the mercantile firms of W. B. Huggins & Co., Crafts & Stell, and Knauth & Storrow, to purchase merchandise for them, and draw bills of exchange on the plaintiffs for the price thereof, and charges and expenses thereon, and having duly advised the plaintiffs thereof, and requested them to accept the same, they, pursuant to the said letter of credit extended as aforesaid, and relying on the said written contract of the said James Read & Co., and the hypothecation and promise of a specific lien therein contained, did accept bills of exchange drawn by the said mercantile firms, to pay for merchandise purchased by them for the said JameS Read & Co. That the said James Read & Co. have wholly failed to comply with their said promise to the plaintiffs to provide in London previous to the maturity of the said bills of exchange sufficient funds to meet the payment thereof together with the plaintiffs' commission thereon, and on the twenty-third day of April, 1842, by a decree of the district court of the United States, within and for the said district of Massachusetts, the said James Read & Co., upon their own petition, were duly declared bankrupts, and George Morey, Esquire, of Boston, aforesaid, was duly appointed their assignee; so that it is now wholly beyond the power of the said James Read & Co. and their assignee, to provide funds as aforesaid, nor do they, or either of them intend or expect so to do. That of the merchandise purchased as aforesaid and paid for by bills of exchange drawn as aforesaid, some has already reached the hands and possession of the said James Read & Co., whereof some has been sold, and the proceeds thereof remain in their hands, or have come to the hands of their assignee, in the form of bills of exchange or promissory notes, or in some other form, so that the same can be identified and specified; and some thereof still remain in their hands, or the hands of their assignee, unsold. And some of the said merchandise so purchased and paid for, as aforesaid, having arrived in this country after the said James Read & Co. had become insolvent, and had filed their petition to be declared bankrupts, the plaintiffs' said agent applied to them in behalf of the plaintiffs, to perform their said contract by delivering to him the bills of lading of such property as had not yet been received by them, and thereupon the said James Read &

Co. did endorse and deliver to the plaintiffs' said agent the bills of lading of merchandise, which the said James Read & Co. had then received. That of the said merchandise so purchased and paid for as aforesaid, the bills of lading of some part have come to the hands of the said Morey as assignee, and of a part the bills of lading have not yet arrived, but the whole of the residue of the said merchandise is soon expected to arrive and to come to the hands of the said assignee. That on or about the twenty-fifth day of March, 1842, the plaintiffs, by their said agent, applied to the said James Read & Co., and requiring of them that all property purchased by virtue of the said letters of credit, or the proceeds thereof, if sold, should be placed in the possession of the plaintiffs' said agent, for the plaintiffs' security, in compliance with the contract aforesaid, and the said James Read & Co. admitting that they were bound to do so by their contract aforesaid, did hand to the said agent an invoice of the said merchandise then remaining unsold, and also a list of all unsettled accounts of the sales of the said merchandise, which had been sold, but by reason of their having petitioned for a decree of bankruptcy as aforesaid, refused to permit the said plaintiffs' said agent to take possession of the said merchandise. That the said Morey had actual notice before his appointment to the said trust, of the plaintiffs' lien on the said merchandise and bills of lading, and express and particular notice thereof very soon after his said appointment, and was requested to permit the plaintiffs to take possession thereof pursuant to their rights under the said contract of James Read & Co. with the plaintiffs, but the said Morey as such assignee refused and still refuses so to do.

The bill concludes with a prayer, that the court will be pleased to declare that the plaintiffs are justly entitled to and have a lien on all the said merchandise and the proceeds thereof, and the bills of lading therefor, as collateral security for the faithful performance by the said James Read & Co. of their said contract with the plaintiffs, or for such further and other relief as the nature of the case may require and to your honors may seem meet, &c.

The answer admits, generally, the facts stated in the bill relative to making and extending the letter of credit, and to the bankruptcy of the defendants, and the appointment of the defendant as assignee of the firm of James Read & Co.; it also admits,

that upon application by the plaintiffs, the defendants did deliver up to the plaintiffs six bills of lading of merchandise, but he submits, that they had no right or authority so to do; and that the said delivery and endorsement were null and void.

The bill annexes a schedule of certain merchandise shipped by Fletcher, Alexander & Co. to James Read & Co., and a schedule of merchandise received and sold, and the proceeds of which were disposed of by James Read & Co. previous to their going into bankruptcy, and asserts that no part thereof has come to the possession or control of this defendant, except certain sums of money, which were due and owing to the said James Read & Co. on the said seventeenth day of March, on account thereof, which have not yet been collected, and certain merchandise received by this defendant since that time, which are set forth in an exhibit, and which conform to the exhibit annexed to the plaintiffs' bill. The bill further alleges, that the defendant to his knowledge, information and belief, received no formal notice of any claim of the plaintiffs to the said merchandise, or the proceeds thereof, until after the twenty-third day of April last, when he was appointed assignee as aforesaid, and that no formal demand has been made upon him for an account or delivery thereof, or otherwise, unless the filing of the said bill of complaint was such demand. But that the said Curtis and his solicitors did before and after this defendant's appointment as assignee, as aforesaid, and before the filing of the said bill, have one or more casual conversations with this defendant, in which they alluded to the possibility of their making such a claim and filing such a bill, but the same were not understood by this defendant as meant for or intended to be formal demands or in the nature thereof, nor as legal notices that such claim would be attempted to be enforced. That no part of the merchandise purchased by means of bills of exchange drawn under the said letter of credit and the extension thereof, was purchased by the said plaintiffs or from them, but that the same was purchased by various persons, acting as agents, or under the directions of the said James Read & Co. and for their sole account, and that these persons, in order to reimburse themselves for the said purchases, drew bills on the said plaintiffs, in pursuance of the orders of the said James Read & Co. That the merchandise, so purchased, was forwarded to the plaintiffs at Liverpool to be shipped to the said James Read & Co. at Boston, and the said plaintiffs voluntarily and of their own accord, parted with the possession of the said merchandise, and consigned the same to the said James Read & Co., and suffered the same to go into their absolute possession, and to be sold or disposed of at their pleasure, without any claim or notice of any title, interest or lien of the said plaintiffs in or upon said merchandise or any part thereof.

The defendant denies, that the said plaintiffs have, or are entitled to have, in law or in equity, any lien upon the said goods and the proceeds thereof, or any right, title or interest in or to the same, and claims, that such of said merchandise as was in the hands-of the said James Read & Co. at the time of the filing of their said petition, and such as has

since come to the possession of them, or of this defendant, and the proceeds of all such merchandise theretofore sold, are vested in this defendant, as the assignee of the estates of the said James Read & Co., free from and divested of all liens, claims, or demands whatsoever, in favor of the plaintiffs, and that he claims so to hold them for the benefit of the creditors of the said estate, and to be disposed of according to law. And this defendant further says, that, with regard to the goods on hand on the said seventeenth day of March, the said James Read & Co. had paid or given bonds for the payment of the duties thereon; with regard to those received since that time, this defendant has paid the duties thereon, and this defendant claims to be reimbursed for all the duties so paid or secured to be paid upon said goods, and for all expenses of freight, storage, truckage, and other incidental expenses, incurred in or about said goods, if it should be held that the plaintiffs are entitled to the same. Whereupon this defendant respectfully prays, that he may be hence dismissed and allowed his costs.

The following statement was, by consent, made a part of the case: "The letter of credit and the agreement for a lien, which was co-extensive with it, expired in December, 1841; after which time, all the drafts mentioned in the bill were drawn and accepted. The said Read & Co., and Thomas B. Curtis, were ignorant, that the letter of credit expired at that time, and acted on the belief, that it had not expired; and it is presumed, that the plaintiffs were also ignorant of the fact when they accepted the bills. This fact was not known to the counsel in the case, when the bill and answer were filed, and they may be taken as amended accordingly. C. P. & B. R. Curtis, for plaintiffs."

The cause was set down for a hearing upon the bill and answer.

B. R. Curtis and C. P. Curtis, for plaintiffs.

Francis C. Loring, for defendant.

STORY, Circuit Justice. It does not appear to me that there is any real difficulty in the present case. The bill asserts an equitable lien against certain shipments, and the proceeds thereof, in the hands of Mr. Morey, as assignee in bankruptcy of Messrs. Read & Co., under an agreement stated in the bill, and admitted by the answer, as security for advances made by the plaintiffs under the

same agreement. I say under the agreement, because, although the acceptances and advances were, in fact, made after the time stipulated in the renewed agreement for a prolongation of the original credit (in which I suspect the words "from its date" are inserted by mistake instead of "from this date"); yet it is agreed by the parties in the additional statement introduced into the case, that, in point of fact, the parties on both sides acted upon the supposition that the renewed agreement actually covered these very acceptances and advances, and that the terms of the original and renewed agreements were fully intended to apply to all the shipments made in precisely the same manner and to the same extent, as if they had been positively included therein. Under such circumstances, in a court of equity, the case stands precisely in the same predicament as if the written agreements did cover them; for, in equity, that is deemed to be done, which the parties intended to do, and which ought to be done.

Now, before proceeding to the points more directly in judgment, it is proper to remark that it is a perfectly well settled principle in equity, that the assignee in bankruptcy takes the property and rights of the bankrupt in the same plight and condition, and with all the equities attached thereto, in the same manner as the bankrupt himself held them. I recollect at present but one exception to the doctrine, and that is in the Case of fraud. The general rule was laid down by Lord Hardwicke in Brown v. Heathcote, 1 Atk. 160, 162, and it has been constantly adhered to ever since. I need not cite the authorities at large. Many of them will be found referred to in a recent opinion, which I had occasion to deliver in the case of Mitchell v. Winslow [Case No. 9,673] at the last October term of the circuit court at Portland. See, also, 2 Story, Eq. Jur. §§ 1224, 1411.

This then being the established principle, the first question which arises in the case, is, whether there is any equitable lien, or right, or claim, under the agreement, which ought to be enforced specifically in equity against the shipments made to and for Messrs. Read & Co., or the proceeds thereof, so far as they can be distinctly traced in the hands of the assignee; and upon this point, I entertain no doubt whatsoever. In equity there is no difficulty in enforcing a lien or any other equitable claim, constituting a charge in rem, not only upon real estate, but also upon personal estate, or upon money in the hands of a third person, whenever the lien or other claim is a matter of agreement, against the party himself, and his personal representatives, and against any persons claiming under him voluntarily, or with notice, and against assignees in bankruptcy, who are treated as volunteers; for every such agreement for a lien or charge in rem constitutes a trust, and is accordingly governed by the general doctrine applicable to trusts. The cases of Farr v. Middleton, Finch, Prec. 174, 175; Collyer v. Fallon, 1 Turn. & R. 469, 475, 476; and Legard v. Hodges, 1 Ves. Jr. 478,—are fully in point. In the case of Collyer v. Fallon, 1 Turn. & R. 469, Sir Thomas Plumer (the master of the rolls) said, "The argument on his side (the plaintiff's) has been, that whenever parties contract with respect to a subject-matter,

that subject-matter is thereby bound. I assent to the principle when rightly understood; but it is a principle which must be received with qualifications. Contract with respect to a given matter binds the property as between the parties to the contract; but it does not affect the rights of third persons, or bind the property in reference to any claim which they may have upon it, unless they either have notice, or are volunteers. This limitation of the proposition is stated explicitly by Lord Lough-borough in the very passage which was relied on (1 Ves. Jr. 478). 'Whatsoever,' says he, 'is the agreement concerning any subject real or personal, though in form and construction merely personal and suable only at law, yet, in this court, it binds the conscience;' that is to say, the conscience of the parties to the agreement, and of those who claim under them, either with notice or without consideration. For his lordship adds: 'This maxim I take to be universal, that, wherever persons agree concerning a particular subject, that in any court of equity, as against the party himself, and any claiming under him voluntarily or with notice, raises a trust.'" See, also, 2 Story, Eq. Jur. §§ 1228, 1229, 1231, 1249, note. So that, as a matter of trust directly growing out of, and provided for by, contract, the present case falls directly within the principle above stated. The goods and the proceeds thereof are expressly, by the agreement of the parties, "pledged and hypothecated" as collateral security for the advances. But then it is suggested, that in the proviso of the second section of the bankrupt act of 1841, c. 4, there is no saving of any liens, except such as are valid by the laws of the state respectively; and it is added that, by the laws of Massachusetts, where the bankruptcy took place, no equitable lien exists, or can be enforced in cases of this sort. My opinion is that the terms of the proviso in the second section embrace all liens, equitable as well as legal, which are valid by the state laws. I am yet to learn, that an equitable lien may not exist in Massachusetts, and is not valid between the parties in this state. It is no answer to say, that no remedy is provided for the enforcement of such liens by the state jurisprudence in the state courts. That does not show, that no such liens exist; for many cases of acknowledged trusts no remedy at present exists in the courts of this state; but that does not show, that they have no existence or validity. Trusts in assignments, and in last wills and testaments,

and equitable rights, growing out of partnerships, were, until a comparatively recent period, without any means of being enforced in the state courts of this state. But has any one ever doubted, that, by the law of Massachusetts, such trusts were always valid? There is not, I believe, any remedy now in the state courts to enforce the lien of a vendor for the purchase money of an estate sold by him, even when expressly stipulated for; but yet in Gilman v. Brown {Case No. 5,441}; Id., 4 Wheat. {17 U. S.} 255, the supreme court entertained no doubt, that such a lien, when express or implied, was valid, and might be enforced in the courts of the United States possessing equity jurisdiction, although not remediable in the state courts. In short, it has been long since settled in the courts of the United States, that the equity jurisdiction and equity jurisprudence administered in the courts of the United States are coincident and coextensive with that exercised in England, and are not regulated by the municipal jurisprudence of the particular state, where the court sits. This was expressly decided in Robinson v. Campbell, 3 Wheat. {16 U. S.} 212, 220. and U. S. v. Howland, 4 Wheat. {17 U. S.} 108.

But the proviso in the second section of the bankrupt act of 1841 does not limit the rights of parties to the liens created and supported by the laws of the states. It merely recognizes and preserves their validity. It was by no means intended to affect any of the equitable liens or other equitable claims of parties arising under their contracts, where the contracts themselves were, by the lex loci contractus, valid; as there can be no question, that this was, as between the parties themselves. The fullest jurisdiction is given by the bankrupt act both in the district court and the circuit court, in equity, in all matters touching the bankruptcy; and, of course, that jurisdiction must be, and is to be, exercised according to the general principles applicable to courts of equity. The objection, therefore, is untenable. Assuming, that the state courts have no power to enforce the lien, or equitable claim or charge arising under the present agreement, it is still capable of being specifically enforced in this court under its general equity jurisdiction, as well as under its particular jurisdiction conferred by the bankrupt act of 1841, c. 6, § 8. It is a valid agreement between the parties, and not prohibited by the laws of Massachusetts.

But it is said, that the agreement, if enforced, will operate as a fraud upon the creditors of Reed & Co. under their bankruptcy; and indeed, that an agreement of this sort, so far as respects creditors, is void, as against the policy of the law, and in derogation of the rights of creditors. Now, it is not pretended, nor even suggested, that any fraud was, in fact, contemplated by the parties, or any of them, upon the creditors. The transaction was bonâ fide, for a valuable consideration, and for future advances, to promote the commercial business of the firm of Read & Co., and not to withdraw any of their existing funds from their creditors. No insolvency or bankruptcy, or failure in business was then contemplated by either of the parties. It was as fair and honest a commercial transaction, in its origin, and progress, and consummation, as was probably ever entered into. How,

then, it is against the policy of the law, I confess myself unable to perceive, unless we are prepared to say, that taking collateral security for advances, upon existing or future property, on the part of a creditor, without taking possession of the property at the same time, or when it comes in esse, is per se fraudulent. Possession is ordinarily indispensable at the common law to support a lien; but even at the common law, it is not absolutely indispensable in all cases. This is shown by the recent case of Dodsley v. Varley, 12 Adol. & E. 632, where goods had been sold and deposited in the warehouse of a third person for the vendee; but still it was understood between the parties, that the vendee was not to remove them, until payment therefor; and it was held by the court, that, although the warehouse must be considered as the vendee's warehouse, and he in the actual possession of the goods, yet, "consistently with this, the vendor had, not what is commonly called a lien determinable upon possession, but a special interest sometimes, but improperly, called a lien, growing out of the original ownership, independent of the actual possession, and consistent with the property being in the vendee." What is this, but allowing the existence of an equitable lien, notwithstanding the possession of the goods is parted with, good between the parties, and good as to all persons, not claiming under the vendee, as bona fide purchasers for a valuable consideration without notice? But I take it to be clear, that not only liens, but mortgages of personal property are perfectly good and supportable between the parties, and against creditors, where there is no fraudulent intent, and the possession remains, in the owner or mortgager of the property, and is consistent with the deed and the arrangements made between the parties. That was one of the points decided in the case already alluded to, of Mitchell v. Winslow [supra]. There is a long line of authorities, that in cases of sales of personal property, conditional or absolute, the transfer or conveyance is not void, even though the possession remains with the vendor, if that possession is consistent with, and a part of, the arrangements intended by the parties in the transfer or conveyance. So that the possession of the property by Messrs. Read & Co., in the present case, is not in my judgment, a badge of fraud, or against the policy of the law, or in any manner to be deemed inconsistent with the just rights of their creditors; and, therefore, the agreement is binding and

valid to give a lien or equitable charge upon the property in the hands of the assignee, fit to be enforced in the present suit.

In respect to the other point, suggested at the bar, whether the duties, paid by Messrs. Read & Co. upon the importation of the goods, are to be allowed for and deducted from the value thereof, or of the proceeds in the hands of the assignee, there does not seem to be any ground for the deduction; at least not, unless in respect to such goods, if any, as came into the assignee's hands charged with those duties, since the bankruptcy. The goods previously imported by Messrs. Read & Co., and the proceeds thereof, were to be chargeable with the advances; and it seems to me, that the intention of the parties was, that Messrs. Read & Co. should exclusively bear all the charges of their own importation under the agreement, the duties, as well as the freight and other charges.

These, I believe, are all the points, which it is necessary to notice in deciding the present case. A decree will be entered accordingly for the plaintiffs; and, if necessary, it will be referred to a master to ascertain the amount due to the plaintiffs, and the amount of the property or its proceeds now in the hands of the assignee, which is affected by the equitable lien or charge, growing out of the agreement.

[1] {Reported by William W. Story, Esq.}