

Case No. 4,992. FOURTH NAT. BANK V. WALKER ET AL.
[24 Int. Rev. Rec. 211; 10 Chi. Leg. News, 323.]

Circuit Court, N. D. Illinois.

1878.

TRANSFER OF SECURITIES—RIGHTS OF GUARANTOR—ESTOPPEL.

Held, that a guarantor of commercial paper has the right, as guarantor, to take up such paper and transfer his claim as guarantor, to the parties from whom he obtained the means with which to take up the paper. The court states how the parties in this case would be estopped by their acts.

On the tenth day of August, A. D. 1869, S. J. Walker borrowed of Sarah Maher, wife of Hugh Maher, \$50,000, and secured the same by causing Henry H. Walker, his brother, to execute two promissory notes, of that date, each for \$25,000, and falling due three years after date, respectively. He also caused H. H. Walker to execute two certain trust deeds to John G. Rogers, as trustee, each of said trust deeds securing one of said notes. It does not clearly appear whether said two trust deeds were altogether upon the same premises, or upon different pieces of property. The premises which were conveyed by the trust deed, although standing of record in the name of H. H. Walker, were in fact, the property of S. J. Walker, and the indebtedness so secured was, in fact, the indebtedness of S. J. Walker, the former holding the title and executing the papers for the convenience of the latter. Both the notes in question were indorsed by Sarah Maher and Hugh Maher, her husband, and guaranteed in writing by S. J. Walker. Hugh Maher pledged both of said notes, secured as aforesaid—one with the Fourth National Bank [of Chicago] and the other with J. Irving Pearce, president of the Third National Bank, in his individual capacity. The note held by Pearce, falling due August 10, 1872, was taken up in the following manner within ten days after maturity. Pearce urged Maher, and Maher urged S. J. Walker, to take it up. On the day of its maturity or thereabouts, S. J. Walker paid thereon to Pearce, \$10,000, and being unable, to pay the balance, made the following arrangement with Greenebaum and Foreman, bankers, with whom he had been doing a very large business. He was then largely indebted to Greenebaum and Foreman, which indebtedness still remains unpaid, and for the security of which, among other collaterals, they held what was known as the "Price note," originally for the sum of \$12,000, but reduced to \$10,000, by payment or otherwise. S. J. Walker represented to Greenebaum and Foreman, that he desired the Price note upon which to raise money elsewhere, with which to aid in payment of the note held by Pearce, and that if they would surrender it to him, he would with the proceeds thereof, and other means, take up the note so secured, out of the hands of Pearce, and would in consideration thereof, deliver to them the Walker note and the security held by Pearce, in lieu of the Price note. He also represented to them that it would be a valid binding security in their hands, and that he had a right so to pledge it; and upon the faith of such representations they agreed to surrender to Walker

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the Price note for the purpose aforesaid, upon condition that they should receive the note held by Pearce, as

well as the trust security therefor. S. J. Walker then, on August 19, 1872, gave Pearce his check upon some bank—what particular bank the evidence does not show—with the understanding that it should go through the clearing house, and be paid the next day. On August the 20th, Greenebaum and Foreman, under the agreement stated, surrendered the Price note to Walker, who pledged or sold same to raise money thereon, and on that day Pearce sent Walker's check through the clearing house, with the \$25,000 note reduced to \$15,000, pinned thereto. The check was paid and the note surrendered to S. J. Walker, who delivered it, with the trust deed securing it, to Greenebaum and Foreman, who still hold and claim it as a security for the indebtedness due them from Walker, which is much larger than the amount due upon the Walker note. Neither Pearce nor Mr. nor Mrs. Maher knew how Walker had raised the money with which to pay that note. Pearce told Maher the note had been paid, and both of them so regarded it. As to the other \$25,000 note so pledged with the Fourth National Bank, it fell due at the same time, but was not paid or taken up until about November 5, 1872. It was taken up and satisfied in some way by Walker, and on November 5, 1872, in satisfaction of the old note or for some other indebtedness, S. J. Walker delivered to the Fourth National Bank another promissory note for \$25,000, due in two years and executed by H. H. Walker, and secured by a new trust deed. This was likewise guaranteed by S. J. Walker. The new trust deed ran to Samuel M. Moore, and covered the same property contained or described in the trust deed transferred to, and held by, Greenebaum and Foreman. The new trust deed taken by the Fourth National Bank was filed for record December 31, 1872, several months after Greenebaum and Foreman had obtained the one held by Pearce. The Fourth National Bank filed a bill to foreclose the trust deed securing the note of November 5, 1872, alleging that the security held by Greenebaum and Foreman had been paid and satisfied, and that the trust deed securing the same had consequently ceased to be a lien for the security of that note. It prayed that that deed might be declared a cloud upon the title, and as such, removed by decree, and that the premises be sold to satisfy the indebtedness so due to it.

Monroe, Bisbee & Ball, for complainant.

Rosenthal & Pence, for Greenebaum and Foreman.

Held by HARLAN, Circuit Justice. That as to Maher and wife and Pearce, the note for \$25,000, held by Greenebaum and Foreman was paid. As between Greenebaum and Foreman and Samuel J. Walker, the latter was estopped by his representations to the former from alleging that it had been paid. H. H. Walker was equally estopped in view of his relations in this matter to Samuel J. Walker. But if Samuel J. Walker and H. H. Walker are to be regarded as having distinct, separate rights, then the lien claimed by Greenebaum and Foreman can be sustained upon the ground that S. J. Walker had the right, as guarantor, to take up the \$23,000 note and transfer his claim as guarantor

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to the parties from whom he obtained the means with which to take up the note. In a suit by Greenebaum and Foreman, against the Walkers, to enforce the lien given by the trust deed, the latter would be estopped from saying that the debt had been fully paid, or from disputing the lien. The rights of Greenebaum and Foreman are none the less in this action, since the debt and lien asserted by the complainants were both created subsequent to the delivery to Greenebaum and Foreman of the Walker note and deed of trust. Greenebaum and Foreman are entitled to the benefit of the security received from S. J. Walker for such amount as was due upon the Price note surrendered to Walker.