FOX v. ECKSTEIN.

Case No. 5,009.

{4 N. B. R. 373 (Quarto, 123).}[1]

District Court, D. Maryland. 1871.

BANKRUPTCY—CONCEALMENT—BONA FIDE CONVERSION & OF ASSETS—CUSTODY OF PROCEEDS—INVESTMENT.

1. There is no concealment where a debtor makes a bona fide conversion of his property, and shows good faith in respect to the care of the money received therefrom.

2. A debtor will not be adjudicated a bankrupt simply because, after selling his property for the purpose of going into a new business enterprise, he does not put the proceeds into a tangible shape to prevent the same being seized on process issued out of a state court. Petition dismissed.

The allegation was that defendant, on January 4, had concealed a portion of his property, viz.: the sum of two thousand dollars, with intent to prevent its being taken on legal process, which he knew was about to issue at the suit of one or more of his creditors. The defendant excepted to this allegation on the ground that it was too general; that it did not state that any legal process was in existence, that there was no legal process which could reach money in possession, and that the act did not embrace the concealment of property which it was impossible to reach by any legal process. Objections overruled.

It appeared in evidence that the petitioner, defendant, and seven others, had given their joint and several promissory notes in the sums of two thousand five hundred dollars, and one thousand five hundred dollars, for moneys borrowed in behalf of the Scheutzen Association; that the association had made a real estate mortgage to Fox and others to secure them in this sum of four thousand dollars; that after maturity, Fox had paid the one thousand five hundred dollars in cash, and given his individual note (not yet due), with collaterals, in payment of the two thousand five hundred dollar note, and his demand against the defendant was for contribution of one-ninth part of the four thousand dollars. The defendant objected, that petitioner had not a provable claim of sufficient amount, because: First, he did not offer to surrender the security which enured to his benefit on payment of the notes, nor show that there was an overplus of two hundred and fifty dollars; second, the petitioner not having paid the two thousand five hundred dollar note in cash, but having only given for it another obligation, he could not demand from defendant his proportion of that amount; that a co-obligor has no right of contribution against his co-promisor, or co-security, unless he has actually paid the money, and therefore the petitioner's claim was not large enough to support an adjudication.

Marshall & Fisher and Ross & Urner, for petitioner.

John & Albert Ritchie, for defendant.

THE COURT (GILES, District Judge), held that the security being upon the property of a third party, and not upon the debtor's, the case was not within the act; and that the

petitioner having satisfied the holder of the note, it was immaterial how he had done so, and he had a demand for contribution, whether he had, in point of fact, paid it or not.

Touching the allegation, the evidence was, that seven months before the defendant had sold his real estate for two thousand dollars to his son, who gave his note, which was paid at ninety days; that the notes in question, and one other of the same character, were outstanding at the time, and had been for two or three years, and that defendant's other property was about seven hundred dollars; that defendant had sold his said real estate for the purpose of investing the proceeds in a proper business enterprise in which he expected to enter; that on payment of the two thousand dollars he handed it over to his wife, and that she had been in the habit of taking care of any large sums of money defendant had for twenty-five years; that she kept it about the house for several months, and had it on the said 4th January; that when the enterprise referred to was abandoned, defendant looked about for another investment, bought two lots in the county, built the foundations, and was in negotiation with at carpenter for the erection of several small houses when these proceedings commenced; that in December judgment had been had against defendant, and five other co-promisors by another party, on the third note referred to (of four thousand dollars); that defendant claimed to have a right of action against the petitioner for damages amounting to about his proportion of the two notes taken up by said petitioner; that on January 4th petitioner's attorney called on defendant and told him that petitioner had paid these two notes, and he had called to collect his proportion; that defendant replied that he (petitioner) was the one who ought to pay them, and that when petitioner settled his claim for damages referred to. he (defendant) was ready to pay him the difference; that the attorney then asked him what he had done with the two thousand dollars: to which defendant replied that he had it and intended to keep it.

THE COURT held that there was no concealment shown; that the conversion of his property had been shown to be bona fide; that no act had been shown further than to preserve custody of the proceeds; that the proceeds he had a right to preserve in money or not, as he pleased; that the evidence showed good faith on the part of defendant in respect to the care of the money; and that the proposition of the petitioner was

substantially that the defendant ought to be adjudicated bankrupt, simply because he had not put his two thousand dollars again into tangible property that could be seized on a fieri facias. Petition dismissed.

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