KOHLSAAT v. HOGUET et al.

Case No. 7,919.

{4 Ben. 565;[1] 5 N. B. R. 159.}

District Court, S. D. New York. Jan., 1871.

INSOLVENCY—PREFERENCE—REQUISITES TO MAKE A TRANSACTION VOID.

In order to render a transaction between an insolvent and one of his creditors void, if challenged by the assignee in bankruptcy in due time, sis elements must co-exist: On the part of the debtor, insolvency, an intent to give a preference, and doing or suffering the thing which works the preference; and, on the part of the creditor, the receiving or being benefited by such thing, the having reasonable cause to believe the insolvency of the debtor, and the having reasonable cause to believe that a preference is intended.

{Cited in Bingham v. Richmond, Case No. 1,415.}

{Cited in brief in Cook v. Whipple, 55 N. Y. 156.}

{This was a suit by John C. Kohlsaat against Henry L. Hoguet and others.}

G. A. Seixas, for plaintiff.

A. Blumensteil, for defendants.

BLATCHFORD, District Judge. This case comes directly within the decision of this court in the case of In re Black {Case No. 1,457}. The debtor, when insolvent, suffered his property to be taken on legal process on behalf of the defendants, as creditors of his, with the intent to give them a preference, and the defendants had, at the time, reasonable cause to believe that he was insolvent, and that the transaction was in fraud of the provisions of the bankruptcy act {of 1867 (14 Stat. 517)}, and the transaction took place within four months before the filing of the petition in bankruptcy. It was a fraud on the act, for the debtor to give, and for the defendants to take, the preference, with the intent on the part of the debtor that it should be a preference, the debtor being insolvent, and the defendants having reasonable cause to believe so, and reasonable cause to believe that the debtor-intended the preference. The insolvency, the intent to give the preference, and the doing or suffering the thing which works the preference, are the elements on the part of the debtor. The elements on the part of the creditor are, the receiving or being benefited by such thing, the having reasonable cause to believe the insolvency of the debtor, and the having reasonable cause to believe that a preference is intended. These six elements must co-exist, but nothing else is necessary to make the transaction void, if challenged by the assignee in bankruptcy in due time.

In this case, the defendants obtained the money which they realized through the legal process, intending to keep it at all events, and intending to keep it as a preference, if it should be a preference, knowing that it must be a preference, if the debtor should fail to induce the rest of his creditors to take a compromise of fifty cents on the dollar.

The bill alleges sufficient facts to show that the debtor suffered his property to be taken, within the meaning of the act.

There must be a decree for the plaintiff, for the amount received by the defendants, with costs.

[1] {Reported by Robert D. Benedict, Esq., and here reprinted by permission.}