

STOTESBURY ET AL. V. CADWALLADER ET
AL.

{31 Leg. Int. 229;¹ 10 Phila. 281.}

District Court, D. Pennsylvania. July 11, 1874.

BANKRUPTCY—SUITS BY ASSIGNEE—FORM OF
ACTION—EQUITY JURISDICTION.

- {1. It is no objection to the assignee's bringing a suit to recover assets in the form of a creditors' bill, that there are also other creditors of the defendants; for in such a bill complainant sues as one of a class for the benefit of all members thereof who may become parties.}
- {2. In a suit brought by an assignee to recover assets alleged to belong to a bankrupt corporation, the subjects of litigation were classified by the court under three heads: (1) Property and effects traceable as investments, products, or substitutes of the funds of the corporation, in which no defendant had any pretense or color of beneficial ownership; (2) property and effects acquired with funds of uncertain source, but as to which the burden of proof was on the defendants to show a beneficial interest therein; (3) property and effects which were apparently the property of one of the defendants, and as to which the burden was on complainant to show the contrary. *Held* that, in view of this threefold character, the case was a proper one for equitable investigation and remedies.}

{This was a libel in equity by Stotesbury and others, assignees of the Franklin Savings Fund Society, bankrupts, against Cyrus Cadwallader and others.}

CADWALLADER, District Judge. This case was heard upon the bill, and amended and supplemental bill, and upon the answers of certain defendants, and the respective replications and upon certain proofs adduced, among which was the examination of the defendant, Cyrus Cadwallader, in the court of bankruptcy, &c. Whereupon the court, after hearing counsel, was of the opinion that the subjects of the litigation might be considered under three heads, to wit: 1st. Property and effects traceable, as investments,

products or substitutes of the funds of the bankrupt corporation, and in which no defendant has any pretence or color of beneficial interest. 2d. Properties and effects acquired with funds of uncertain source, but as to which the burden of proof is on the defendants, who hold the apparent legal estate, to show that the same are not beneficially the bankrupt corporation's. 3d. Property and effects which from the date or mode of their acquisition are apparently the defendant, Cyrus Cadwallader's, and as to which the burden of proof is on the complainants to establish the contrary. The court was further of the opinion that the complainants are entitled to an immediate decree under the first and second heads, but that as the pleadings now stand such decree could not be carried into effect without an inquiry under each head before a master.

Under the third head the complainants would not have any relief, as the bill is now drawn. But it is amendable (and the case has been discussed by counsel, as if it had already been amended) by being converted under this head into a creditor's bill. This will be explained. The answer of the defendant, Cyrus Cadwallader, suggests what, at first view, might seem to impede any action of the complainants under a creditor's bill. He suggests that there are other creditors who ought not to be affected by such a bill. The answer to the objection is that the complainants in such a bill would sue as one of a class, and would sue in this respect as well on their own behalf as on that of all other creditors who may become parties or may otherwise establish their right to participate in the avails of the suit under this head. If it be further objected that execution at law would be the only proper remedy under this head, the extraordinary peculiarities of the case furnish an answer to the objection.

The answer is, that the complainants are (under the three-fold character of the subjects) frustrated of all present available recourse at law, by reason of the necessity of equitable investigation for the discovery and ascertainment of the proposed classification of the subjects. This, I think, makes the case a proper one for equitable redress throughout. It is the only means of obtaining prompt relief.

From what has appeared of the proportional amount of the other debts, which is comparatively very small, I incline to think that a determination of the whole controversy as to the three subjects might be speedily reached without undue sacrifice by the complainants of any right of the general body of the creditors in bankruptcy. There is no inconsistency in the complainants claiming both as beneficiaries and as creditors, and their claim in the latter capacity is good until they obtain satisfaction by payment in the former capacity. Now their amendments, as proposed, may be made by giving in this alternative such an aspect to their bill as to cover contingently all the subjects of litigation as to which any possibility of doubt can be reasonably suggestable. In this form of a creditors' bill a decree can, perhaps, be made at once, dispensing with inquiries before the master under the first and second heads, and for the benefit of other creditors of this defendant, giving to the bill the character of a creditors' bill throughout. But on this point a final opinion cannot be pronounced without seeing the proposed amendment, and a draught of the decree proposed, and perhaps a draught also of the conveyances, by which effect is to be given to such decree. Of course there can be no reservation of any benefit to this defendant, Cyrus Cadwallader, or to any of his family, as voluntary beneficiaries. But it 177 has been said that his wife is willing, for a small consideration, to unite in the conveyances in such manner as to bar her dower. If, for an amount not

exceeding that which has been named, she will so unite, it would be a very judicious payment on the part of the complainants. She cannot be compelled to unite in the conveyances, and if her dower could, in Pennsylvania, be defeated, as perhaps it might be by forcing sales under the present bill, and its proposed amendment, this could not be done without increased expense, delay and complexity.

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