UNITED STATES *v.* TOBEY.*

District Court, E. D. Pennsylvania. February 27, 1882.

DEATH OF SEAMAN—SALE OF HIS EFFEOTS—RIGHT OF MASTER TO DEDUCT AMOUNT DUE SHIP.

Where the master of a vessel sells at the mast the effects of a deceased seaman, and accounts to a shipping commissioner for the proceeds, in accordance with section 4538, Rev. St., he cannot deduct from such proceeds the amount due the ship by the sailor for wages advanced but not earned.

Motion for judgment *non obstante veredicto.* This was a suit by the United States against the master of a vessel to recover the proceeds of a seaman's effects. On the trial it appeared that Peter Rouel, a seaman on the ship Santa Clara, died during a voyage from San Francisco to Queenstown. He had at the time of his shipment at San Francisco received $75 advance wages. After his death his effects were sold by the master according to law, at the mast, under section 4538, Rev. St. At this sale his effects, including a $20 gold

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piece in decedent's possession, amounted to $49.60. Upon the arrival of the ship at Philadelphia the master reported the sale to a shipping commissioner and stated the seaman's accounts as follows:

Amount of advance,	$75 00
Duration of service, 1 month and 21 days, at $25 per month,	42 50
	$32 50
Amount received from effects,	$49 60
Amount due ship,	32 50

Paid to shipping commissioner,	$17 10

The shipping commissioner denied the right of the master to make any deduction from the proceeds of the seaman's effects, and to test the right to make such deduction this suit was brought.

The court directed a verdict for plaintiff for the whole proceeds, reserving the point whether the master should have paid the whole sum of $49.60 to the shipping commissioner for payment into court, or was entitled to deduct the amount due by the seaman.

Defendant moved for judgment *non obstante veredicto.*

John K. Valentine, U. S. Dist. Atty., for plaintiff.

Henry R. Edmunds, for defendant.

BUTLER, D. J., (*orally.*) Judgment must be entered for the plaintiff on the verdict. The language "the total amount of deduction, if any, to be made therefrom," found in specification 3 of section 4538, applies only to *wages due the deceased* mentioned in this specification. The proceeds of the effects of the deceased must be paid to the shipping commissioner or accounted for, as provided by the section. No deductions from such proceeds can be made on account of any claim due the vessel by the deceased.

The question stated in the opinion of the district judge was argued also before Circuit Court Judge McKENNAN, as if on a writ of error from the circuit court, who said:

I am entirely satisfied that the judgment directed by the district judge is right, and therefore concur with him in the construction given to the act of congress.

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Mortgage—Fraudulent Preference.

In re B. F. ALLEN. This case was decided by the supreme court of the United States at the October term, 1881. Mr. Justice *Woods* delivered the opinion of the court, affirming the decree of the circuit court.

Except as forbidden by the bankrupt law, a debtor has the right to prefer one creditor over another, and the vigilant creditor is entitled to the advantages secured by his watchfulness and attention to his own interests. Neither can it be denied that the mere failure to record a mortgage is not a ground for setting it aside for the benefit of subsequent creditors, who have acquired no specific lien on the property described in the mortgage. But where a mortgagee, knowing that his mortgagor is insolvent, for the purpose of giving him a fictitious credit, actively conceals the mortgage, which covers the mortgagor's entire estate, and withholds it from the record, and while so concealing it represents the mortgagor as having a large estate and unlimited credit, and by these means others are induced to give credit to the mortgagor, who fails and is unable to pay the debts thus contracted, the mortgage will be declared fraudulent and void at common law, whether the motive of the mortgagee be gain to himself or advantage to his mortgagor. It is not enough, in order to support a settlement against creditors, that it be made for a valuable consideration. It must be also *bona fide.* It it be made with intent to hinder, delay, or defraud creditors, it is void as against them, although there may be in the strictest sense a valuable, or even an adequate, consideration.

A. P. Hyde and Coles, Morris & Nourse, for appellants.

Bisbee & Ahrens and J. S. Polk, for appellee.

The cases cited in the opinion were: That a preference may be void although there be a valuable or even adequate consideration. Twyne's Case, 3 Coke, 81; *Holmes* v. *Penney,* 3 Kay & J. 99; *Gragg* v. *Martin,* 12 Allen, 498; *Brady* v. *Briscoe,* J. J. Marsh, 212; *Bosman* v. *Draughn,* 3 Stew. 343; Farmers' Bank v. Douglass, 11 Smedes & M. 469; Root v. Reynolds, 32 Vt. 139; *Kempner* v. *Churchill,* 8 Wall. 362. A deed may become fraudulent by concealment; *Hungerford* v.

Earle, 2 Vern. 260; *Hildreth* v. *Sands,* 2 Johns. Ch. 35; *Scrivener* v. *Scrivener,* 7 B. Mon. 374; *Bank of U. S.* v. *Hineman,* 6 Paige, 526; as by withholding deed from record; *Coates* v. *Geriach,* 44 Pa. St. 43; *Hilliard* v. *Cagle,* 46 Miss. 309; *Gill* v. *Griffith,* 2 Md. Ch. 270; *Hafner* v. *Irwin,* 1 Ired. 490; Hildeburn v. Brown, 17 B. Mon. 779; Neslin v. Wells, 25 Alb. Law J. 249; *Worseley* v. *De Mattos,* 1 Burr. 467; *Tarback* v. *Marbury,* 2 Vern. 510.

Administration of Trust Funds.

INTERNATIONAL IMPROVEMENT FUND OF FLORIDA *v.* GREENOUGH. Appeal from the circuit court of the United States for the northern district of Florida. The question in this case is one of costs, expenses, and allowances awarded to the complainant below out of a trust fund under control of the court. The case was decided in the United States supreme court in April, 1882. Mr. Justice *Bradley* delivered the opinion of the court affirming the decree of the circuit court. Mr. Justice *Miller* dissenting.

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An appeal lies from an order directing costs to be paid out of funds in the hands or under the control of the court. The proceedings before the master may be regarded as so far independent as to make the decision substantially a final decree for the purposes of an appeal. It is a general principle that a trust estate must bear the expenses of its administration, and where one of many parties having a common interest in the trust fund at his own expense takes out proper proceedings to save it from destruction and to restore it to the purposes of the trust, he is entitled to reimbursement, either out of the fund itself or be proportional contribution from those who accept the benefits of his efforts. In the vast amount of litigation which has arisen in this country upon railroad mortgages, where various parties have intervened for the protection of their rights, and the fund has been

subjected to the control of the court and placed, in the hands of receivers or trustees, it has been the common practice, as well in the courts of the United States as in those of the states, to make fair and just allowances for expenses and counsel fees to the trustees or other parties promoting the litigation and securing the due application of the property to the trusts and charges to which it was subject; but an allowance for private and personal expenses is illegal.

Cases cited in the opinion: Angell v. Davis, 4 Mylne & C. 360; Taylor v. Dowlan, L. R. 4 Ch. App. 697; Atty. Gen. v. Brewers' Co. 1 Peere Wms. 376; Atty. Gen. v. Kerr, 4 Beav. 297; Atty. Gen v. Old South Society, 13 Allen, 474; In re Paschal, 10 Wall. 483; Stanton v. Hatfield, 1 Keen, 388; Thompson v. Cooper, 2 Collyer, 87; Tootal v. Spicer, 4 Sim. 510; Larkin v. Paxton, 2 Mylne & K. 320; Barber v. Wardle, Id. 818; Sutton v. Doggett, 3 Beav. 9; Worrall v. Harford, 8 Ves. Jr. 4; In re Williams, 2 Bank Reg. 28; In re O'Hara, 8 Law Reg. (N. S.) 113; Ex parte Plitt, 2 Wall. Jr. 453; Cowdrey v. Galveston R. Co. 93 U. S. 352; Robinson v. Pett, 2 White & T. Lead. Cas. in Eq. 238.

Estate upon Condition.

GILES *v.* LITTLE. In error to the circuit court of the United States for the district of Nebraska. This was an action brought for the recovery of a lot of land in the city of Lincoln. The contention of the plaintiff in error is that the wife of deceased took an estate for life, subject to be determined in case she contracted another marriage, with remainder to heirs of deceased, and that the power of disposal conferred on her by will was co-extensive with the estate she took; that is, that power was granted to her to dispose of her life estate, and consequently the estate conferred by her determined upon her marriage. The case was determined in the United States supreme court, at the October term, 1881; Mr. Justice *Woods* delivering the

opinion of the court reversing the judgment of the circuit court, and remanding the cause with directions to proceed in conformity with the opinion.

Where a testator devises and bequeaths all the property of which he should die seized to his wife, with full power to dispose of the same so long as she shall remain a widow, upon the express condition "that if she shall marry again, then it is my will that all of the estate herein bequeathed, or whatever may remain, shall go to my surviving children, share and share alike:" *held,* 351 that the widow took a life estate, subject to be divested upon her ceasing to be a widow, with power to convey the life estate only.

Cases cited in the opinion: Bradly v. Wescott, 13 Ves. Jr. 445; Smith v. Bell, 6 Pet. 68; Boyd v. Strahan, 36 Ill. 355; Clarke v. Boorman, 18 Wall. 493; Green v. Hewitt, 12 Cent. Law J. 58; Brant v. Virginia Coal & Iron Co. 93 U. S. 326.

Bankruptcy—Fraudulent Preference.

HANSELT *v.* HARRISON. Error to the circuit court of the United States for the western district of Pennsylvania. An action of replevin was brought in the Circuit court by defendant in error to recover possession of certain tanned skins and bark transferred by the bankrupt to the plaintiff in error in fraud of the bankrupt law. The case was decided in the supreme court on April 10, 1882. Mr. Justice *Matthews* delivered the opinion of the court reversing the judgment of the circuit court.

An agreement was entered into by the terms of which the party of the first part was to tan, curry, and finish certain skins, and when finished to send them to the party of the second part, pledging the skins before shipping to the party of the second, the latter to make certain advances for the purpose of enabling the former to carry out his agreement. The party of the first part becoming embarrassed and unable to further carry out his agreement, a second agreement

was entered into, whereby the party of the second part was authorized to take immediate possession, of tannery buildings and materials in hand. *Held,* that the latter transaction, though made with knowledge of the party's insolvency and in contemplation of bankruptcy, if made in good faith was legitimate, and did not constitute an unlawful preference.

Lewis Sanders, for plaintiff in error.

M. F. Elliott and H. C. Parsons, for defendant in error.

Cases cited in the opinion: Powder Co. v. Burkhardt, 97 U. S. 110; Gregory v. Morris, 96 U. S. 619; Cook v. Tullis, 18 Wall. 351; Yeatman v. Savings Inst. 95 U. S. 764; Winson v. McLennan, 2 Story, 492; Stewart v. Platt, 101 U. S. 739.

Patents for Inventions.

BRIDGE, BEACH & Co. *v.* EXCELSIOR MANUF'G Co. 21 O. G. 1955. Appeal from the circuit court of the United States for the eastern district of Missouri. This case arises upon a bill in equity founded on letters patent granted for an improvement in cooking-stoves. The case was decided on appeal in the supreme court of the United States on May 8, 1882. Mr. Justice *Bradley* delivered the opinion of the court affirming the decree of the circuit court.

Letters patent claiming, "in combination with a stove door, a hinged shelf, fitted to fall outward and down automatically when the oven door is opened and to be raised up by closing the oven door, adapted to operate on it for that purpose," covers only the specific devices for raising and lowering the hinged shelf, and as both devices claimed operate upon the same principle precisely 352 as that which has been used for a long time for other similar purposes and as defendants use a different device, they are not guilty of infringement.

R. H. Parkinson, for appellants.

S. S. Boyd, for appellees.

Admiralty—Appeal—Practice.

WINSLOW *v.* WILCOX; WILCOX *v.* WINSLOW. Appeal and cross-appeal from the circuit court of the United States for the northern district of Ohio. The question presented by the appeal in this case is whether the circuit courterred in taking jurisdiction of the appeal from the district court. The decision of the supreme court of the United States was rendered on April 3, 1882. Mr. Chief Justice *Waite* delivered the opinion, affirming the decree and dismissing the cross-appeal.

The rule of the district court requiring an appeal to be in writing and filed with the clerk could be dispensed with by that court; and if the district court allows an appeal without the writing, the appellee cannot object to the jurisdiction of the circuit court on that account. When, afterwards, the bond is given and accepted the appeal is perfected, and from that time the jurisdiction of the circuit court attaches; and a provision in the rule of the district court that the clerk shall prepare and deliver to the circuit court the appeal and record in 20 days, cannot prevent the circuit court from entertaining the cause, if for any reason, this is not done. Cross-appeals must be prosecuted like any other appeals. Every appellant, to entitle himself to be heard on his own appeal, must appear here as an actor on his own behalf, by appearance of counsel and giving the security required by the rules, otherwise he will not be heard on such appeal; citing Grigsby v. Purcell, 99 U. S. 505.

H. A. Terrell and A. G. Riddle, for appellants.

L. Prentiss and Jacob D. Cox, for cross-appellants.

Admiralty—Practice.

NICKERSON *v.* MERCHANTS' STEAMSHIP COMPANY. Appeal from the circuit court of the United States for the district of Maryland. This case was decided in the supreme court of the United States

on March 27, 1882. Mr. Chief Justice *Waite* delivered the opinion, affirming the motion to dismiss the case.

Where the only question presented arises on the findings of fact, and from these it appears that the collision was due solely to an unjustifiable change of course of the schooner when the vessels were in close proximity, which baffled the steamer in her efforts to pass in safety, the steamer is not liable for the consequences.

John H. Thomas and George L. Thomas, for appellee.

* Reported by Frank P. Prichard, Esq., of the Philadelphia bar.

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