

BARNES, as Assignee, etc., v. VETTERLEIN and others.

(District Court, S. D. New York. December 30, 1882.)

BANKRUPTCY—FRAUDULENT ASSIGNMENT.

Where a policy of insurance, obtained by a debtor on his own life, was assigned to one of a firm consisting of four members, in trust, as security for a debt due to the firm, and two members of the firm subsequently retired, and the firm assets passed to the remaining members, one of whom was the trustee of the policy, and, the last-named firm having become embarrassed and procured an extension of credit from their creditors, the trustee of the policy two months afterwards assigned the policy to his sons in trust for their mother without consideration, and six months afterwards made a general assignment, and shortly after was thrown into bankruptcy, *held*, that the assignment of the policy in trust for the mother must be deemed invalid as to creditors, and that the assignee in bankruptcy was entitled to the proceeds.

In Bankruptcy.

James K. Hill, for plaintiff.

T. M. Tyng, for Etna Ins. Co.

B. E. Valentine, for defendant Vetterlein.

BROWN, J. This is an action to set aside a voluntary conveyance or assignment made by Theodore H. Vetterlein, one of the bankrupts, to Bernard T. Vetterlein, the other bankrupt, and to one Theodore J. Vetterlien, in trust for the benefit of the wife and children of Theodore H. Vetterlein. Bernard T. Vetterlein and Theodore J. Vetterlein are both sons of Theodore H. Vetterlein. The assignment is dated the eighteenth day of July, 1870, and the petition under which Theodore H. and Bernard T. Vetterlein were adjudged bankrupts was filed December 28, 1870. The assignment sought to be set aside is of two policies of insurance on the life of one J. Kinsey Taylor for the aggregate sum of \$10,000, which had been assigned to Theodore H. Vetterlein by Taylor, in trust for the firm of Vetterlein & Co., to whom Taylor was indebted, and as collateral security for their claim. In July, 1869, Mr. Meurer, one of the firm, withdrew from the firm of Vetterlein & Co., and on December 31, 1869, Theodore J. Vetterlein withdrew from the firm, and the business was continued by Theodore H. Vetterlein and Bernard T. Vetterlien, in the same firm name, up to the time of the bankruptcy proceedings.

From all the evidence in the case I am satisfied that neither Mr. Meurer nor Theodore J. Vetterlein had, at the time of the last assignment of the policies, any valuable pecuniary interest in the assets of the two former firms; and that the last firm, consisting of Theodore H. and Bernhard T. Vetterlein, became legally vested with all the re-

maining assets of the prior firms, and thereby was entitled to the entire beneficial interest in the policies of insurance held by Theodore H. Vetterlein as collateral security for the debt of Taylor. The assignment of these policies of insurance by Theodore H. Vetterlein to his sons in trust for their mother, being the assignment of a collateral security held for a debt due to the firm, was clearly not made in the ordinary course of business, and, therefore, was presumptively fraudulent under section 5129 of the Revised Statutes.

In May, 1870, some two months before the assignment by Theodore H., the firm had applied to their creditors for an extension of credit. This of itself is a virtual admission of the strongest character of their inability at that time to pay their debts as they matured. In less than six months after the assignment of the policies of insurance, the firm made an assignment of all their assets to an assignee in trust for the payment of their debts. These assets were, shortly afterwards, turned over to the assignee in bankruptcy, who has been able to realize from them only the gross sum of \$112,957, while the debts proved in bankruptcy amounted to \$351,000. No losses of any considerable amount are proved between July, when the assignment of the policies was made, and the December following, when the general assignment and the bankruptcy took place. The defendants allege that there had been great loss and waste in the collection of the assets. It is not necessary to examine this charge in detail; for in no aspect can it be held to account for the large deficiency between the debts proved and the gross assets collected.

From these facts, as well as the extension of credit procured the May previous, I am compelled to find that the firm was at that time in embarrassed circumstances, and was probably actually insolvent. The transfer of the policies, which were the property of the firm, by Theodore H. to his two sons, in trust for the benefit of their mother and her children, was, under such circumstances, a wholly unauthorized and invalid transfer as against the creditors of the firm. *Sedgwick v. Place*, 12 Blatchf. 163. So far as it appears it was purely voluntary, and is fraudulent in law as against the firm creditors. It must, therefore, be declared null and void as against the assignee in bankruptcy, (*Platt v. Mead*, 9 FED. REP. 91, 96,) and the proceeds, which during the pendency of the suit have been deposited in the trust company, must be adjudged to belong to the plaintiff, and be accounted for in the bankruptcy proceedings.

A decree may be entered in accordance herewith.

In re STEWART RUBBER Co., (Limited,) Bankrupt.

(District Court, N. D. New York. April, 1883.)

ASSIGNEE IN BANKRUPTCY—COMPENSATION.

Under the circumstances of this case the additional compensation asked by the assignee cannot be allowed unless the consent of the creditors is first obtained.

In Bankruptcy.

William H. Shepard, for petitioner.

COXE, J. I do not think the court would be justified in making an additional allowance to the assignee upon the facts disclosed in the petition. Nothing is shown which particularly distinguishes this case from others of like magnitude. Wherever an extensive business has been suspended by the operation of the bankrupt act, the assignee is compelled and required to give much time and attention to the collection of the assets and the winding up of the estate. The case is not, however, for these reasons a "special" one, "requiring great care and exertion on the part of the assignee," within the provisions of general order No. 30, as amended. Before entering upon his trust the assignee knew, or might easily have ascertained, generally at least, what his duties were to be—what was required of him to administer properly the estate. He could then have refused to qualify, but instead of this, knowing precisely what compensation the statute allowed, he accepted. That he has done his duty thoroughly and well seems to be sufficiently established; but this the law and good conscience required of him, and he is not entitled to extra compensation for that reason. I am aware of no precedent in this district for an additional allowance where nothing more is shown than is developed here.

The application must, therefore, be denied; but if, at the approaching meeting, the creditors desire to give an additional allowance to the assignee, not exceeding $3\frac{1}{2}$ per cent. of the entire amount collected, they may express that wish by a vote of three-fourths in number and amount of those who have proved their debts. This application may then be renewed, upon a certificate of the register setting forth the action of the creditors, together with his approval thereof.