

STADLER and others v. CARROLL, Garnishee.<sup>1</sup>*(Circuit Court, S. D. Texas. February, 1884.)*

## ASSIGNMENT.

An assignment which authorizes the assignee to sell the assigned goods on credit, which undertakes to distribute the remnant after paying consenting creditors, in opposition to the terms and provisions of the law, and by which the assignees, by such distribution, exclude from the benefits of the assignment their individual creditors, and reserve an interest for themselves, is unauthorized by law. *Lawrence v. Norton*, 15 FED. REP. 853, and *Muller v. Norton*, ante, 719, followed.

On Demurrer to Answer of Garnishee.

*Crawford & Crawford*, for plaintiffs.

*Wright & Wright* and *J. A. Carroll*, for garnishee.

PARDEE, J. The assignment in this case, which is under section 3 of the act of 1879, is attacked for fraud apparent on its face, to-wit: (1) It prefers creditors for rent, taxes, and assessments. (2) It authorizes the assignee to sell the assigned goods on credit. (3) It undertakes to distribute the remnant after paying consenting creditors, in opposition to the terms and provisions of the law. (4) The assignors, by such distribution, exclude from the benefits of the assignment their individual creditors, and reserve an interest for themselves.

The case of *Lawrence v. Norton*, 15 FED. REP. 853, and *Muller v. Norton*, ante, 719, gives sufficient reasons for sustaining the second, third, and fourth grounds. On the first ground it is not necessary to pass.

The demurrer is sustained.

McCORMICK, J., concurs.

MALVIN and others v. WERT, Assignee.<sup>1</sup>*(Circuit Court, N. D. Texas. February, 1884.)*

## ASSIGNMENT TO CREDITORS.

An assignment for the benefit of all the creditors, without proof or suggestion of insolvency, where there is no attempt to prefer any creditor, but a decided attempt to hinder and delay them all, is unauthorized by law.

On Demurrer to Answer.

*Ray & Stanley* and *L. T. Smith*, for plaintiffs.

*Wright & Wright*, for defendant.

<sup>1</sup> Reported by Joseph P. Hornor, Esq., of the New Orleans bar.

PARDEE, J. In this case, which is one of assignment for the benefit of all the creditors, there is no attempt to prefer any creditor, but a very decided attempt to hinder and delay them all. Without any suggestion of insolvency, or contemplation of insolvency, the assignor provides that his assignee shall dispose of the assigned goods, consisting of wares, liquors, and merchandise, in the customary course of trade, for 60 days, and then, if there is anything left undisposed of, the remaining goods shall be sold at public auction for cash, after advertising during the time provided by law for the sale of property seized under execution, and providing that during the delay of advertising the assignee shall continue the disposition of goods at private sale. The assignee is given no option. The course laid out in the assignment is the one he is bound to follow. The time required by law for advertising goods to be sold under execution is not less than 10 days. The assignment, then, without any suggestion of insolvency, compels the creditors to a forced stay of 70 days. If the assignor can compel a stay of 70 days, why not for 7 times 70 days? We find no authority in the law of 1879 for such provision. We are aware that assignments that make no preferences, but provide for an equal distribution among all the creditors, should be favored. "Equality is justice." It is with this view that we lay no stress on the objections urged against this assignment, that the deed does not show the maker's insolvency, nor assign in terms all the property that the debtor may have subject to the demands of his creditors. If the debtor has property concealed within the state, the law aids the assignment, and if the property can be found it passes to the assignee. See *Blum v. Welborne*, 58 Tex. 157. If the debtor has property beyond the state it can be reached by creditors who may so choose, just as well as if the assignment had not been made, for the assignment compels the discharge of no debt, nor the release of the debtor. But with this disposition to favor and sustain this assignment, we are unable to see our way clear to sanction the enforced stay of execution which hinders and delays all creditors, and, being unauthorized by law, consequently defrauds them all.

The demurrer is sustained.

MCCORMICK, J., concurs.

## UNITED STATES v. WHITE, Receiver, etc.

*Circuit Court, N. D. New York. March 13, 1884.)*

## TAXATION—NOTES USED FOR CIRCULATION—NOTES REDEEMABLE IN GOODS.

The tax imposed by the act of congress of February 8, 1875, § 19, upon "notes used for circulation," is a charge upon such notes only as are intended to circulate as money. The act bears no reference to the so-called notes issued by mercantile firms to be redeemed in goods.

At Law.

*Martin I. Townsend*, U. S. Atty., for the United States.

*John L. White*, for defendant.

WALLACE, J. This is a writ of error to the district court for the Northern district of New York, brought to review a judgment of that court in favor of the defendant. The first question presented by the bill of exceptions is whether certain obligations issued by the firm of Aldrich, Sweetland & Co. are liable to taxation under section 19 of the act of congress of February 8, 1875, entitled "An act to amend existing customs and internal revenue laws, and for other purposes." Section 19 reads as follows:

"Every person, firm, or association other than national bank associations, and every corporation, state bank, or state banking association, shall pay a tax of ten per centum on the amount of their own notes used for circulation, and paid out by them."

The firm of Aldrich, Sweetland & Co., merchants, had issued, paid out, and put into circulation, in the neighborhood of their place of business, their obligations or promises to pay in goods at their store, varying in amount from 5 cents to \$5 each, and amounting in the aggregate to nearly \$5,000, in form as follows: "Due the bearer one dollar in goods at our store. Kennedy, N. Y., Oct. 14, 1878. ALDRICH, SWEETLAND & Co."

If the meaning of the term, "notes used for circulation," could not be satisfactorily ascertained by a reference to other acts of congress *in pari materia*, the question presented would be a more doubtful one, because, although such promises to pay are not negotiable notes, inasmuch as they are not payable in money, they are notes within the generally-accepted meaning of the word. A literal reading of the section would subject to taxation every note an individual might execute and deliver, unless there is some special meaning to the term, "used for circulation;" yet no one would contend that the section was designed to have this extended application. More especially would such a construction be a startling one, in view of the provisions of section 20 of the same act, which imposes a tax of 10 per centum on the notes of any person, firm, or corporation used for circulation by all other persons, firms, and corporations. It is not to be supposed that congress intended by the act in question to subject all promissory notes circulating in the business of the country to a tax of 10