

HICKOX v. ELLIOTT and others.

(Circuit Court, D. Oregon. November 12, 1884.)

1. LIMITATIONS.

A suit in equity may be maintained to enforce a security for a debt, although an action against the debtor directly upon the indebtedness is barred by lapse of time: and for such purpose the debt exists, notwithstanding the lapse of time.

2. SUIT TO SET ASIDE A CONVEYANCE.

A suit in equity to set aside an assignment or conveyance of property made to hinder or delay creditors, should ordinarily be brought within the same time after the right accrues as an action at law to recover possession of the same property.

3. PARTIES TO A SUIT.

Where a trustee sues to recover possession of the trust property for the benefit of the *cestui que trust* merely, or simply to enforce his right thereto against third persons, such *cestui que trust* is not a necessary party thereto; and in a suit to set aside an assignment or conveyance made to hinder or delay creditors, the grantor or assignor therein, if he has parted with all his right in the property, is not a necessary party either.

4. EQUITABLE ASSIGNMENT—MAINTENANCE.

E. being a member of a railway construction firm in Oregon, and defendant in a suit brought there by his partners to dissolve said firm and determine the rights of the parties therein, applied in California to W., a citizen of that state, for a loan of money to aid him in asserting his rights in said suit, which W. agreed to and did advance on E.'s promise to repay the same, with interest, and his assignment to H., in trust for W., of all his interest in said firm, as a security for the repayment of said money and interest, in which suit there was afterwards a decree given in favor of E. and against his partners for a sum of money; and at the time of making such assignment E. also gave W. the option to take a portion of any railway property or bonds that he might obtain in such suit, in lieu of said money and interest. *Held*, (1) that the assignment of E.'s interest in the firm embraced the decree in his favor for the sum of money which represented and stood for such interest, and that the trustee therein became in equity the assignee of said decree as soon as it came into existence, and might maintain a suit to set aside specific covinous assignments and conveyances by the defendant therein, made with intent to hinder and delay the collection of the same; (2) the option given W. is not involved in the suit to enforce the decree, and therefore it is immaterial whether it is void for champerty or not; (3) the contract for the loan and repayment of the money was made and to be fulfilled in California, and therefore valid, whether champertous or not, by the law of Oregon; and the fact that security was taken on property in Oregon for the performance of the contract, does not change its character in this respect.

Suit to Set Aside Conveyances to Hinder and Delay Creditors.

James K. Kelly and C. E. S. Wood, for plaintiff.

Thomas N. Strong, for Joseph Holladay.

W. H. Holmes, for S. G. Elliott.

C. J. Macdougall, for Ben Holladay.

DEADY, J. This suit is brought by George C. Hickox, a citizen of California, against Simon G. Elliott, Ben Holladay, Joseph Holladay, and William H. Effinger, citizens of Oregon, to subject certain property, the legal title of which is now in Joseph Holladay, to the payment of a certain decree heretofore given by the supreme court of Oregon against Ben Holladay, on the ground that said property was

assigned, transferred, and conveyed to the former by the latter to hinder and delay his creditors, and that the plaintiff is the assignee of said decree in trust for Martin White, a creditor of said Elliott. The defendants demur to the bill separately, and assign numerous and different causes of demurrer, that on the argument were resolved or condensed into these: (1) The non-joinder of necessary parties, plaintiff and defendant; (2) the contract on which the plaintiff seeks to recover is void for champerty; and (3) the plaintiff has been guilty of laches. The facts stated in the bill are substantially these:

On September 12, 1868, Elliott formed a partnership with Ben Holladay and one C. Temple Emmet, by the name of "Ben Holladay & Co.," for the purpose of constructing and operating railways in Oregon, and thereafter the said partnership was engaged in the construction of the Oregon Central Railway Company, until November 5, 1869, when Holladay and Emmet commenced a suit against Elliott in the circuit court for Multnomah county to dissolve said partnership and settle the accounts thereof, which suit was afterwards transferred to the circuit court for the county of Marion, in which court, on September 28, 1877, a decree was entered dissolving said partnership, and adjudging Elliott to be indebted to the other members of the partnership in the sum of \$470, from which decree Elliott took an appeal to the supreme court of the state, wherein, on August 15, 1879, a decree was given dissolving said partnership, and providing that Elliott recover from Holladay the sum of \$21,919.46, and from Emmet the sum of \$8,596, with his costs and disbursements in that court, no part of which sums have been paid to Elliott, and there is now due on said decree from Ben Holladay said sum of \$21,919.46, with legal interest from August 15, 1879.

On February 10, 1874, Elliott, being unable to meet the expense of this litigation with his partners, applied to Martin White, then and now a citizen of California, for a loan of \$12,000, "to enable him to defend said suit, and for other purposes," and offered to secure the payment of the same by an assignment "of all his right, title, and interest" in said suit to the plaintiff, in trust for said White, whereupon the following contract was duly made and signed by the parties thereto:

"Memorandum of agreement between S. G. Elliott and Martin White, made the tenth day of February, 1874.

"A controversy exists between S. G. Elliott and Ben Holladay, and others, relating to the right of said Elliott in and to the Oregon Central Railroad Company, and its stock, bonds, franchises, and other property, which controversy involves substantially all the property and rights of the said company; and, among other things, at least three million two hundred thousand (3,200,000) dollars of the bonds of said company.

"For the purpose of asserting and maintaining his rights in said controversy, said Elliott has borrowed from Martin White the sum of twelve thousand (12,000) dollars in gold coin of the United States, and has agreed to repay the same within one year from the date of the last installment thereof, as