LILIENTHAL v. DRUCKLIEB et al.

(Circuit Court, S. D. New York. February 11, 1898.)

1. FRAUDULENT CONVEYANCES.
   A sale, though fraudulent and void as to creditors, is binding on the parties to it.
2. CREDITORS' BILL—GOOD WILL OF BUSINESS.
   A creditors' bill extends to nothing which the creditors cannot reach, and hence does not require a finding by the master of the value of the good will of a business, which cannot be levied upon in satisfaction of their claims.

This was a creditors' suit by Clotilde Lilienthal against Charles A. Drucklieb and Julius C. Drucklieb. The cause was heard on exceptions to the master's report.

William H. Blymyer, for plaintiff.

Louis O. Van Doren and Henry B. Twombly, for defendants.

WHEELER, District Judge. This cause has been before considered by this court, and the liability of the defendants for property of Maurice Lilienthal, acquired in fraud of the rights of his creditors, adjudged and decreed. Lilienthal v. Drucklieb, 80 Fed. 562. It has now been heard on exceptions to the report of the master, to whom it was sent to ascertain the amount so received and retained away from the creditors. The property consisted of goods and dues of a store in New York in charge of Charles A. Drucklieb, as agent of Lilienthal, who lived in Paris. A large part of the goods was sold at once, and the avails were deposited in this court at the suit of creditors, and withdrawn on stipulation and order of court thereupon, by Charles A. Drucklieb. The defendants insist that what went to other creditors before this suit was well accounted for, and that more so went than the master has found and allowed. That they should not here be charged with what another creditor had previously obtained on account of the same fraud seems quite clear; but the question as to how much so went to other creditors, and how much was retained, has been determined by the master upon conflicting, and more or less convincing and doubtful, evidence, and his findings upon such evidence should not be disturbed without good cause, such as might set aside a verdict. No such cause appears here; on the contrary, the finding seems to be well warranted by the evidence. Charles A. Drucklieb claims that he was to receive 2 per cent. commissions on all sales as agent for Lilienthal, and not less than $4,000 for the year from March, 1888; and that, having received only $150 per month for but a part of the year, he should be allowed to retain the balance, $2,380, out of the avails of these goods. The master does not find the agreement, and if it existed it would be superseded by the sale which, although fraudulent and void as to creditors, would be binding upon the parties to it. The plaintiff has excepted to the report because a value of the good will has not been found and stated. As this is a creditors' bill, however, it extends to nothing that they could not reach, and the good will could not be levied upon in satisfaction of

their debts. Besides this, the master states that no value of any good will was by any evidence made to appear. The plaintiff has excepted to the failure of the master to charge the defendants for some plushes. The question as to that rested upon the weight of, and inferences to be drawn from, evidence more or less indirect, and no good reason for disturbing the master's finding upon it appears.

The interlocutory decree was against both defendants for property received by both or either. The master's report says that, in the proceedings before him, "no evidence was introduced to show any liability as against Julius Drucklieb," and that he considered only the account of the defendant Charles A. Drucklieb. The plaintiff has excepted to this course of the master, but it seems to have been proper in stating the proceedings before him. The liability depends upon the decree, which, although interlocutory, stands, unless it is changed, as it may be, if deemed erroneous, in making up the final decree. This question has been reargued, however, upon this exception, and reconsidered. That no substantial part of the property itself came to the hands of Julius C. Drucklieb is clear, for he did not come in till after it had been sold and the money paid into court. While the money was in court he went to Europe to see Lilienthal about settling the matter, and, according to testimony of Charles A. before the master, that was so far the business of his journey that his expenses were charged to this property; and, according to his testimony in the case, Charles A. had no property but this that came from Lilienthal to put into the business, and yet he put in money after the commencement of the business till it was largely increased, which would be at about the time he was receiving the money with which he is charged by the master; and Julius C. became acquainted with one Herzig, in Paris, who had been engaged in this business with Lilienthal there, and continued in it with these defendants afterwards, and was then treating with Lilienthal about his property and business here. That Julius C. did not know anything about the dealings of his brother with Lilienthal at that time is not, under the circumstances, fairly credible. The letters of Charles A. to Herzig, at the time Julius C. was going to see Lilienthal, about the business all three were engaged in with him, show well that the position of Julius C. in the new firm here was being used to conceal the avails of the property of Lilienthal from his creditors. If the avails of this property had gone into the new firm as the share of Charles A. without the knowledge of Julius C., their presence in the assets of the firm would not seem to make the latter liable for them to the creditors. The shares of each in the new firm, with dates, could doubtless have been easily and exactly shown; but the testimony of Julius C. in the case left this wholly in doubt, and he does not appear to have testified at all before the master. Upon the whole, the decree against both appears to be correct, and should stand. Exception of plaintiff to report as to several liabilities dismissed, all others overruled, report accepted and confirmed, and decree on report against both defendants.

BLUTHENTHAL et al. v. SOUTHERN RY. CO.

(Circuit Court, N. D. Georgia. November 13, 1898.)

CARRIERS—DUTY TO CARRY LAWFUL GOODS—INTOXICATING LIQUORS—INJUNCTION.

A railroad company will be enjoined from refusing to carry from another state into South Carolina intoxicating liquors in original packages, consisting of bottles packed in wooden cases, when tendered in car-load lots, with a release of liability for waste or breakage not resulting from its own negligence.

Application for Mandatory Injunction.

This was a bill filed by Bluthenthal & Bickart, residents and citizens of the Northern district of Georgia, against the Southern Railway Company, a corporation of Virginia, and a resident and citizen of Virginia. Bluthenthal & Bickart were engaged in interstate commerce in the state of South Carolina and other states, and they were engaged several months prior to the filing of their bill in shipping goods consisting of whiskeys, brandies, wines, beer, and similar articles, in original packages, into South Carolina, and there selling the same through their agents. In view of the dispensary law of South Carolina, they were compelled to sell such goods in original packages in that state, and to ship the goods into the state in original packages. Beginning on or about August 1, 1897, they commenced making these shipments into South Carolina, and the Southern Railway Company received such shipments, and continued to receive them until on or about September 11, 1897. Such shipments were received by the company with a release of liability signed by Bluthenthal & Bickart. On September 11, 1897, Bluthenthal & Bickart were notified by the railway company that it would refuse to accept further shipments of original packages. On the day following, a shipment of original packages of liquors was tendered to the railway company, and by it refused, although freight charges were offered in advance, and Bluthenthal & Bickart agreed to sign any release which the railway company would require. The agent of the railway company exhibited to Bluthenthal & Bickart a circular issued by the company, which read as follows:

"Southern Railway Company. General Freight Department. Transportation of Interstate Commerce Shipments of Spirituous and Malt Liquors to Points Within the State of South Carolina. Notice to Shippers and Connecting Lines.

"Counsel having decided that spirituous and malt liquors in bottles, when not packed in cases or casks, are not in proper shipping condition, and that the usual form of release will not relieve the company from liability in case of damage by wreckage, notice is hereby given that on and after September 16, 1897, shipments of spirituous and malt liquors in glass, loose, not packed in cases, casks, or kegs, will not be accepted by this company for transportation.

"Issued September 9, 1897. H. F. Smith, General Freight Agent.
"Effective September 16, 1897.
"Approved: J. H. Culp, Traffic Manager."

It was charged that the reason given by the railway company was not the real reason of their refusal, but charged that this railroad, with other railroads running into South Carolina, had entered into a conspiracy with the authorities of South Carolina by which the roads agreed to refuse to transport the goods of orators and others engaged in similar business into the state of South Carolina in original packages. It was further charged that the state of South Carolina was engaged in the business of buying and selling spirituous and malt liquors, and wished to prohibit all other persons from engaging in such business in that state. It was stated in their bill that the points to which they wished to ship the original packages in South Carolina were reached only by the Southern Railway Company, and that it was necessary for them to replenish their agencies at said places, and that irreparable damage would result