

STOWE et al. v. BELFAST SAV. BANK.

(Circuit Court, D. Maine. November 23, 1897.)

1. DEED—VALIDITY—EFFECT OF ACKNOWLEDGMENT OF CONSIDERATION.

An acknowledgment of the receipt of the consideration in a deed under the law of Maine, while it does not estop the grantor from denying the actual payment of the price, will prevent him from defeating the operation of the deed, or showing that it was executed without consideration.

2. ASSIGNMENTS FOR CREDITORS—ASSENT OF CREDITORS—RECORD.

That the assents of creditors to an assignment by a debtor in Massachusetts were subsequent to the recording of the deed of assignment in Maine, where real estate of the assignor was situated, so that the record did not exhibit such assents, did not affect the validity of the assignment, nor prevent the record from operating as notice to creditors attaching the property after the assents were given.

3. SAME—EFFECT OF STATE INSOLVENCY LAWS.

The insolvency laws of a state are limited in their operation to the territory of the state, and cannot be invoked in aid of, nor to defeat, an assignment for the benefit of creditors made in another state by an inhabitant of the latter state.

4. SAME—EFFECT OF DEED—PROPERTY IN ANOTHER STATE.

A voluntary deed of assignment made by a debtor for the benefit of all of his creditors is effective to transfer to the grantee the title to real estate situated in another state when executed and recorded in accordance with the requirements of the law of such state, and where, by such laws, nonresidents are permitted to hold and convey real estate therein.

5. FEDERAL COURTS—FOLLOWING STATE DECISIONS.

The courts of the United States are not required by Rev. St. § 721, to follow state decisions made on grounds of public policy or comity merely; and a single decision of the supreme court of a state, made in 1828, holding that, as to property situated in that state, a general assignment made by a debtor in another state would not be allowed to defeat an attachment of such property by one of its own citizens, which decision has never been repeated, will not be accepted as binding on a federal court in the state.

This was an action at law by William E. Stowe and others against the Belfast Savings Bank, involving the validity of an attachment, and a sale thereunder of certain land claimed by plaintiffs as trustees under a general assignment for the benefit of creditors, made by the attachment debtor.

Edward Woodman, for plaintiffs.
Symonds, Snow & Cook, for defendant.

WEBB, District Judge. This is a real action. The plea is, did not disseise. The parties submit the case to the court upon the following stipulation and agreed statement:

"As there is no controversy between the parties as to the facts in this case, it is agreed that the case may be submitted to the court upon the subjoined statement of facts, which may be treated by the court as the findings of a jury. To the rulings of the court upon the facts thus presented, each party reserves the right of exception and appeal by writ of error to the circuit court of appeals.

"Facts: The property in controversy is a tract of real estate, situated in the town of Eden, Hancock county, Maine, and its value is about \$7,500. Prior to February 8, 1889, the legal title was vested in one George W. W. Dove, of Andover, Mass. On February 8, 1889, said Dove, being insolvent,

made a common-law assignment and conveyance of all his property, of every kind, not exempt by law from attachment and seizure on execution, to John C. Ropes, of Boston, Mass., for the equal benefit of all of his creditors, without preferences of any kind, a copy of which assignment is hereto annexed, and made a part of the case. Said assignment and conveyance was duly recorded February 11, 1889, in the registry of deeds for the county of Hancock, in which county the land in controversy is situated. Subsequently, on the 11th day of March, 1889, said Ropes resigned his trust as assignee under said assignment; and the plaintiffs in this action are his duly-appointed successors in his said trust, as assignees of said Dove, and, by appropriate conveyances, have become invested with such title as said Ropes took under said assignment to the real estate in controversy. The total amount realized by the assignees from the sale of Dove's property, and the collection of his assets up to the present time, has been less than twenty-six thousand dollars; and the only property remaining, upon which they have not realized, is the real estate in controversy, and some corporation stocks, which are worthless. After said assignment was recorded as aforesaid, and prior to September 11, 1889, creditors of said Dove to the aggregate amount of \$396,961.33 had become parties to said assignment, and assented to its provisions; but there is no record in the registry of deeds for said county of Hancock of such joinder and assent of such creditors, and there is not in said registry any record of said assignment after the same had been joined in and assented to by such creditors; but defendant bank never became a party to said assignment, or assented thereto. On September 11, 1889, the Belfast Savings Bank, the defendant herein, attached the real estate in controversy, as the property of said Dove, in suit brought by said bank against said Dove, in the supreme judicial court of the state of Maine. In this suit said bank recovered judgment against said Dove for the sum of \$17,190 debt and \$33.94 costs of suit, on the 8th day of May, 1891, upon which judgment execution was issued; and on the 5th of June, 1891, the real estate in controversy was duly seized upon said execution, and subsequently advertised and sold at public auction, by the officer holding said execution, to the Belfast Savings Bank, for the sum of \$7,500, said bank being the highest bidder therefor; and said officer subsequently executed and delivered to said bank a proper deed conveying to said bank all the right, title, and interest which said Dove had in and to the premises in controversy on the 11th day of September, 1889, when the same were originally attended as above set forth. All the proceedings attending said seizure and sale were regular and in accordance with the provisions of the statutes of the state of Maine, and the officer's deed was effective to convey to the defendant all the right, title, and interest of said Dove in the real estate in controversy which it held by its attachment of September 11, 1889.

"Under the foregoing stipulation and agreed statement, it is the intention of the parties to submit to the court the single question whether or not the common-law assignment for the benefit of creditors, executed by Dove on the 8th of February, 1889, duly recorded as aforesaid, and subsequently assented to by creditors whose aggregate demands exceeded the total value of the property assigned, as above set forth, is valid as against the subsequent attachment of the defendant, on the 11th of September, 1889. If the court shall rule, as matter of law, upon the foregoing facts, that the assignment from Dove to Ropes, takes precedence over the subsequent attachment by the defendant bank, judgment is to be entered for the plaintiffs; but, if otherwise, then judgment is to be entered for the defendant."

The agreed statement relieves the court of any inquiry as to the facts of this case, and the distinct statement of the question of law involved might excuse a simple answer of that question; but it will be more satisfactory and better to state the reasons for the conclusion reached.

The assignment is a common-law assignment, which recognizes the statute of insolvency of Massachusetts in force at its date. It has been argued that the assignment was under and dependent upon that

statute. This position cannot be approved. It is true that, for some of its conditions and provisions, reference is made to that statute, but only to save the labor and trouble of enumerating specially such conditions and provisions. The assignment is made specially subject to abrogation by the institution of proceedings in the insolvency court within six months. It is under seal, and properly acknowledged and recorded. Such an assignment is valid under the laws of Massachusetts and of Maine, as well as at common law. *National Mechanics' & Traders' Bank v. Eagle Sugar Refinery*, 109 Mass. 38; *Todd v. Bucknam*, 11 Me. 41; *Frank v. Bobbitt*, 155 Mass. 112, 29 N. E. 209; *Train v. Kendall*, 137 Mass. 366; *Mayer v. Hellman*, 91 U. S. 496, 500; *Reed v. McIntyre*, 98 U. S. 507, 511; *Pickstock v. Lyster*, 3 Maule & S. 371.

In *Train v. Kendall*, the plaintiff, a citizen of Massachusetts, attached by trustee process a debt due from a citizen of the same state to Kendall Bros., the principal defendants, citizens of New York. Kendall Bros., before the attachment, had made a general assignment of all their real and personal property to one Hall, in trust to pay, first, certain preferred creditors, and then their other debts ratably. The assignee appeared as claimant. The superior court dismissed the claim, and charged the trustee. On exceptions by the assignee (claimant), the supreme court sustained the exceptions. The following extract from the opinion of the court in that case, delivered by Judge Field (now the chief justice), is peculiarly appropriate here:

"If Kendall Bros. [the assignors] were domiciled in Massachusetts, this assignment, having been assented to by creditors who held claims in amount exceeding the value of the property assigned, would be good against an attaching creditor; and there is nothing in the policy of our laws that invalidates the assignment because Kendall Bros. are domiciled in New York. If the assignment is also valid by the laws of that state, Kendall Bros. cannot, under our statutes, be adjudged insolvent debtors; and it therefore becomes impossible to invalidate the assignment by proceedings instituted by an assignee in insolvency; but, in the absence of any statute making this assignment void or voidable by Massachusetts creditors, the common law prevails in actions at law, for it is the common law which the plaintiff invokes, and not any process, if there be any, for the equitable distribution of the assets of Kendall Bros. found in Massachusetts. In so deciding, we do not give effect to a foreign law prejudicial to our own citizens; we give effect to an assignment which is good against the plaintiff in this action by our own law." *Cemetery v. Davis*, 76 Me. 289, 292; *Chaffee v. Bank*, 71 Me. 514, 523, 524.

Objection has been made that the instrument of assignment was not duly recorded. The cases cited in support of this objection were cases of recording deeds, which had not been acknowledged pursuant to statutory requirement, and are not pertinent to this case. This assignment was sealed and acknowledged, and was lawfully recorded. But it is further said it was without consideration. Passing for the present the question of fact, it is to be said that the right to be recorded is not dependent on the consideration of a deed.

Rev. St. Me. c. 73, § 17, provides that "deeds shall be acknowledged before * * * any justice of the peace, magistrate or notary public within any of the United States." Subsequent sections of the same chapter provide for the death or departure of a grantor without ac-