

tion of this. It affords relief for a surety when the creditor does not prove the claim by allowing the surety to prove it for subrogation, but nothing more. The relief is the same that the surety would have if the creditor should prove the claim, and get what could be had upon it voluntarily. The creditor has no right to anything more than payment, and the surety who has borne the burden is entitled to the benefit. These rights arise, not from the original contract of suretyship, but from the equities of the subsequent transactions. *Miller v. Sawyer*, 29 Vt. 412. Subrogation of the surety to the rights of the creditor does not enlarge them. They extend only to such dividends as the creditor can have. Here, Hartshorn should pay the balance due between him and the bankrupt to the trustee, now, for administration; and the trustee should pay the dividends on the bankrupt's half of the note, when declared, to Hartshorn. One-half of bank claim to stand for benefit of Hartshorn. Hartshorn's claim merged in balance of \$444.20 due the estate.

In re JACKSON et al.

(District Court, D. Vermont. May 12, 1899.)

BANKRUPTCY—COLLECTION OF ASSETS.

Where a debtor of the bankrupt gave him a promissory note made payable to the order of a certain bank, but the same had not been indorsed by the bank, and no notice of any assignment of it had been given to the maker, and the trustee in bankruptcy could not find the note, *held*, that the bank should be restrained from indorsing the note, and that the debtor should not be permitted to set up the note against payment to the trustee of his indebtedness to the estate.

In Bankruptcy. On report of referee in bankruptcy.

George N. Dale, for trustee in bankruptcy.

Elisha May and J. W. Erwin, for certain creditors.

Porter Dale, for Dyer and Island Pond Nat. Bank.

WHEELER, District Judge. The report of the referee on the petition of the trustee shows that creditors, undertaking to reach assets of the estate held in some alleged fiduciary capacity by trustee process in the state courts, have stipulated to discontinue their suits. Questions as to such liabilities of bankrupts relate to the discharge, and not to the assets, or the right of the trustee to the assets, which this court seems to have jurisdiction to protect. The stipulations, if carried out, will avoid the necessity of any injunction to restrain these suits. The report shows that Dyer gave Jackson a note dated October 27, 1898, payable to the order of the Island Pond National Bank three months or ninety days from date, on partnership account, which the trustee cannot find, the bank has not indorsed, and no notice of any assignment of which given to Dyer appears, and that Dyer owes the bankrupt firm \$87, if the note is disregarded. It would not become negotiable paper as to others without indorsement by the bank, nor could it be effectively assigned as a chose in action without notice to Dyer, and could not

be in existence anywhere before the bankruptcy proceedings as a valid claim against Dyer but in the hands of Jackson, nor since but in his hands, where it would belong to the trustee, or in the hands of the trustee as an asset of the estate. Dyer might be embarrassed if the bank should indorse it; therefore such indorsement should be restrained, and Dyer should not then be permitted to set up the note so unaccounted for against payment to the trustee of what is justly due from him to the estate. These proceedings may remain pending for carrying out these suggestions. Ordered accordingly.

GOODIER v. BARNES et al'

(Circuit Court, N. D. New York. June 19, 1899.)

1. **BANKRUPTCY—JURISDICTION OF CIRCUIT COURT—CITIZENSHIP.**

Under Bankruptcy Act 1898, § 23, a circuit court of the United States has no jurisdiction of a bill in equity by a trustee in bankruptcy to set aside an alleged fraudulent conveyance of property by the bankrupt, when the bankrupt, the trustee, and the defendant are all citizens of the same state.

2. **SAME.**

Clause c of section 23, providing that "the United States circuit courts shall have concurrent jurisdiction with the courts of bankruptcy, within their respective territorial limits, of the offenses enumerated in this act," has no applicability to civil actions; the "offenses enumerated" meaning the crimes described in section 29.

In Equity. Motion to dismiss the bill on the ground that this court has no jurisdiction of the action, which is brought by a trustee in bankruptcy to set aside an alleged fraudulent transfer by the bankrupt of his property. All the parties are citizens of this state and reside in this district.

Fred. G. Fincke, for the motion.
Fred. H. Hazard, opposed.

COXE, District Judge. No papers have been submitted on this motion except the briefs. The court understands that no objection is made to the form of the motion and that the sole question which counsel desire the court to determine is whether or not the circuit court has jurisdiction of the action. The court has been unable to find an authority sustaining the jurisdiction; none is cited. A persuasive argument, sustained by several recent decisions, can be advanced in favor of the jurisdiction of the district court in these cases, but this conclusion, if affirmed, will not aid the complainant. Although the authorities are not in accord as to the proper construction of the present act, they all, apparently, agree that section 23 prohibits the circuit court from entertaining jurisdiction of actions of this character. *Burnett v. Mercantile Co.*, 91 Fed. 365; *Mitchell v. McClure*, Id. 621; *In re Sievers*, Id. 366; *Carter v. Hobbs*, 92 Fed. 594; *In re Abraham*, 93 Fed. 767; *Hicks v. Knost*, 1 Nat. Bankr. News, 336, 94 Fed. 625.