

wine to himself, obtained from them a loan of \$10,000, evidenced by a note signed by himself as principal and his wife as surety, and secured by a mortgage upon the undivided one-third of the land. The deed was undoubtedly made to defraud creditors, and could give no title or security to any one who should buy it or loan money thereon with knowledge of the facts. A judgment had been taken in Ross county by Rockhold, Brown & Co., creditors of John W. Corwine, and complainants herein, on the 8th day of November. The mortgage was executed on the 10th day of November, and the deed and mortgage were recorded upon the same day. It is conceded that the priority of Hayes, Jones & Co.'s lien is not affected by the fact that the judgment against Corwine was taken before the mortgage was executed, the title then not being in Corwine, if Hayes, Jones & Co. are in the attitude of bona fide purchasers for value. The sole question in the case is, therefore, whether Hayes, Jones & Co. stand in that situation. The money which Barger obtained he deposited in the bank of Hayes, Jones & Co. He gave his check for something over \$5,000 to pay a note held by Hayes, Jones & Co. upon which Corwine and three others were liable as makers or indorsers. He used the other \$5,000 to pay a note of Corwine's held by the National Bank of Circleville. In accordance with the decision of *Bank v. Taylor*, 4 C. C. A. 55, 53 Fed. 854, I have no difficulty in holding that Hayes, Jones & Co. are bona fide purchasers to the extent of \$10,000, if they had no notice of facts that would put them upon an inquiry which, if pursued, would have led to knowledge of the fraudulent character of the deed. I have read the evidence upon the question of the knowledge of Hayes, Jones & Co., but I can find nothing upon which to sustain the contention of the complainants that either member of the firm had notice which would lead a reasonable man to suppose that the deed in question was a fraudulent one. The deed from Corwine to Barger will be set aside, and the property covered thereby will be sold, subject, however, to the payment to Hayes, Jones & Co. of the amount due upon their mortgage, and interest. The costs of the litigation as between the complainants and Hayes, Jones & Co. will be taxed to the complainants.

HERRMANN v. CENTRAL CAR-TRUST CO. et al.

(Circuit Court, S. D. New York. June 14, 1899.)

PLEDGES—RIGHTS OF PLEDGEE—ESTOPPEL.

A pledgee of bonds as secondary security, to make good any deficiency there may be after other security has been exhausted, by whose act or with whose consent the primary security has been rendered unavailable for payment of the debt, is estopped from claiming that the contingency will ever arise to entitle him to subject the pledge to its payment.

Final Hearing upon Pleadings and Proofs.

F. K. Pendleton, for complainant.

Howard A. Taylor, for defendants.

LACOMBE, Circuit Judge. Whatever defect of parties there may have been originally has been corrected by the appearance of the new railroad company. The original contract under which these bonds were pledged provides:

"If there is a default in the payment of any or all of the said lease warrants, the aforesaid rolling stock and equipment will be first sold to make good the said default, and the bonds hereby assigned and transferred shall be held as secondary security to make good any deficiency that may result after the said equipment has been realized upon."

By the action or with the assent of the pledgee or of those representing it the "said rolling stock" was not sold to make good the default, and the said property was put in such a position that any such sale was made impossible, and that no one could tell whether there was any "deficiency [resulting] after said equipment has been realized upon." The original pledgee and all claiming under its original contract are estopped from claiming that the contingency provided for has arisen or can ever arise, or that the 70 bonds may be availed of as secondary or as any other security, to make good a possible deficiency which defendants have made impossible of ascertainment. Decree for complainant, with costs.

PUTNAM et al. v. TURNEY & JONES CO.

(Circuit Court, S. D. Ohio, W. D. April 18, 1899.)

SALE OF BUSINESS—RIGHT TO BOOKS OF SELLER.

A bill of sale made by a partnership to a corporation, which succeeded to its business, covering all its personal property and all its "rights, privileges, and choses in action," carries the right to the books of the firm.

On motion of the receiver to compel H. D. Turney to deliver to him the books of the firm of Turney & Jones on the ground that they are the property of the Turney & Jones Company.

Winston & Meagher, for complainant.

Outhwaite & Linn, for defendant.

TAFT, Circuit Judge. By bill of sale dated the 28th of January, 1897, the firm of Turney & Jones, consisting of H. D. Turney and J. F. Jones, in consideration of \$150,000, paid to the Turney & Jones Company, bargained, sold, granted, and conveyed to the Turney & Jones Company, its successors and assigns, the following described property, to wit: "All its rights, privileges, choses in action, leases, owned or contracted for by the said firm and partnership, and in which the said firm and partnership has any interest, present or to come, and all personal property of said firm and partnership, of all kind and description, and wheresoever situate; to have and to hold the same unto the said the Turney & Jones Company, its successors and assigns, forever." I have no doubt, from the language of the bill of sale, that it did carry the books of the firm of Turney & Jones. The affidavits which have been filed by employes of Turney & Jones do not in the slightest degree affect this conclusion. The purport of them is that the books have always been in the custody of H. D. Turney. As