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Livermore Vs. Jenckes

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Court : US Supreme Court

Decided On : 1858

Appeal No. : 62 U.S. 126

Appellant : Livermore

Respondent : Jenckes

Judgement :

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Livermore v. Jenckes

62 U.S. (21 How.) 126*

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

The laws o Rhode Island allow an assignment to be made by a failing debtor, for the benefit of certain preferred creditors and for the exclusion of those who should refuse to execute releases from their respective claims.

The laws of New York do not permit such assignments.

Where an assignment with the above reservation was made in Rhode Island by a person and to persons residing there which conveyed to trustees certain property in Rhode Island and also property in New York, it was proper for the Circuit Court of New York to dismiss a bill filed by creditors residing there, provided there was no fraud in fact in the assignment.

The complainants never acquired nor ever had any lien upon the property in New York so as to subject it legally or equitably to their demand against the failing debtors either before or after it was carried into judgment in the supreme court of New York.

Livermore and Sexton, who filed the bill, were citizens of New York, and Jenckes, Farnum, and Waterman citizens of Rhode Island.

The complainants claimed to set aside an assignment made on the 19th of April, 1854, by Waterman, to Jenckes & Farnum, upon the ground that the assignment was to enure to such of Waterman's creditors who should sign a release. This provision, it was admitted, was valid by the laws of Rhode Island, where the assignment was executed, but invalid by the laws of New York, where the property in question was situated. Livermore and Sexton had become judgment creditors after the assignment was made, and if it could be set aside, the property would be open to execution upon their judgments.

The defendants all answered the bill, and much evidence was taken. After the cause was heard upon the pleadings and proofs, the circuit court passed the following decree:

"This cause having been heretofore brought on to be heard at final hearing on pleadings and proofs, and having been argued by Mr. A. J. Willard on the part of the plaintiffs, and by Mr. T. A. Jenckes and Mr. C. A. Seward on the part of the defendants, now, on consideration thereof, it is found and decided by the court,

that the property in the State of New York, assigned by the defendant Waterman to the defendants Jenckes & Farnum, by the assignment mentioned in the pleadings herein, was taken into possession by said assignees, and converted into money, and the proceeds transferred to the State of Rhode Island, prior to the filing of the bill in this cause, and that the plaintiffs have no lien on said property, and that there was no fraud in fact in the making of said assignment, and it is therefore ordered, adjudged, and decreed, that the bill in this cause be and the same is hereby dismissed, with costs to the defendants against the plaintiffs to be taxed, and that the defendants have execution against the plaintiffs for such costs, according to the course and practice of this Court."

The complainants appealed from this decree.

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MR. JUSTICE WAYNE delivered the opinion of the Court.

This bill was filed by the appellants in the Circuit Court of the United States for the Southern District of New York, as judgment creditors of the respondents, Waterman & Samuel Harris, to avoid an assignment made by Waterman to the respondents, Jenckes & Farnum, in trust for the payment of the creditors of Harris & Waterman, and of Waterman individually.

The appellants seek to avoid the assignment, on the ground that it was voidable, from its tending to hinder, delay, and defraud creditors; because there is a reservation in it to the assignee of the dividends of such creditors as should refuse to become parties to it, and to release their demands in consideration of the dividends they might receive. It appears that a large amount of the property conveyed was in the State of New York; that the appellants resided there, and that they were then creditors of Harris & Waterman. The trusts in the deed were, first, to pay the expenses of the assignment; secondly, to pay the debts of several preferred creditors of Harris & Waterman, and of Waterman individually; and thirdly, to pay all the residue of the debts of Waterman individually, and as a member of the firm of Harris & Waterman. The assignment contained the following

proviso:

" *Provided* that none of my said creditors named in the third class of this assignment shall be entitled to receive any dividend or benefit under the deed of assignment, unless they shall execute and deliver to my said assignee, within six months from the date hereof, a full release and discharge, under seal, of all their claims and demands against me, the assignor; but the dividends on the claims and demands of the creditors who shall not execute

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such release shall be paid over to me, the said assignor, or to such person as I shall appoint."

It appears that Harris, the co-partner of Waterman, had given to the latter a bill of sale of all their partnership property; that the firm was then dissolved; that Waterman had the possession of it, and that he afterwards made the deed of assignment to Jenckes & Farnum. Now Jenckes & Farnum received and held the property under the assignment, as well that which was in New York as all that was elsewhere. A part of the co-partnership property was the Owasca Lake mill, situated at Auburn, Cayuga County, State of New York, and it is admitted that it exceeded in value the debt due by Harris & Waterman to the complainants. As to that property, James Fitton was a co-partner; but it appears that he joined with Harris & Waterman in dissolving the co-partnership, and in authorizing Waterman to "settle up" its business, having on the same day agreed that Harris should convey to Waterman the bond and mortgage which he had given to Harris & Waterman for the purchase money due by him for an undivided fourth part of the Owasca Lake mill. Thus Waterman was made the sole owner of it. He supposed himself at that time to be solvent, and that he could carry on the business of the mill, and worked it for some time; but finding himself unable to do so, he conveyed it to Jenckes & Farnum, with all the other property of the late concern which had become his, with the intention that they should, as his assignees, make an equitable distribution of it among his creditors; and, in his answer to the bill of the complainants, he declares he did so without any fraudulent intent to hinder, delay,

or defraud creditors. Waterman had been, was then, and was when he made the assignment, a citizen of the State of Rhode Island. The property assigned was in different states. Jenckes & Farnum accepted the trusts of the assignment. Waterman ceased to have any control over it, and, for aught that appears, the assignees have executed their trust unimpeachably. After the assignment was made, the complainants obtained, in the supreme court of New York, a judgment upon their demand against Harris & Waterman.

They have now brought their bill as judgment creditors

against Waterman and Jenckes & Farnum, the assignees, to avoid the assignment; alleging that they have a lien upon the property in New York, or its proceeds, as creditors of Harris & Waterman, because Waterman's assignment to Jenckes & Farnum contained a reservation to the assignor, which, by the laws of New York, was fraudulent. And so it would have been had the assignment been made in that state by persons residing there. But the assignment was made in the State of Rhode Island by a person and to persons residing there, and is in every particular just such a one as, by the laws of that state, merchants and others in failing circumstances residing there are allowed to make in favor of creditors within that state and those residing elsewhere, wherever the property of the assignor may be. We see no cause for thinking it was fraudulently made. The respondents deny it upon their oaths as responsively to the charge made by the complainants as that can be done. The latter have not sustained their charge by any proof whatever. For that cause alone, if there was no other, we should concur with the circuit judge in the decree given by him in this case. And we also concur with him that the complainants never acquired nor ever had any lien upon the property in New York, so as to subject it legally or equitably to their demand against Harris & Waterman either before or after it was carried into judgment in the supreme court of New York. Deeming the grounds stated decisive of this controversy, we abstain from a discussion of other points learnedly and ably argued by the counsel in the cause in their respective printed briefs. They were appropriate to the cause, but we do not deem them necessary for the decision of it.

We direct the affirmance of the decree given in the court below.

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