Bank of Leavenworth Vs. Hunt

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Court : US Supreme Court

Decided On : 1870

Appeal No. : 78 U.S. 391

Appellant : Bank of Leavenworth

Respondent : Hunt

Judgement :

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Bank of Leavenworth v. Hunt

78 U.S. (11 Wall.) 391

ERROR TO THE CIRCUIT COURT

FOR THE DISTRICT OF KANSAS

SYLLABUS

1. Courts cannot assume in their instructions to juries that material facts upon which the parties rely are established unless they are admitted, or the evidence

respecting them is not controverted.

2. An agreement between persons insolvent and a bank whereby the insolvents, for the purpose of securing their existing indebtedness to the bank as well as to obtain future advances, promise its president to deliver to the bank whenever it may desire the entire stock of goods which they may have at the time on hand in a store kept by them, the goods being in the meantime retained in their possession, is void as against their other creditors.

3. Such an agreement does not create any lien upon the property or entitle the bank to any preference over other creditors in the event of the debtors' being afterwards proceeded against under the Bankrupt Act.

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Any subsequent sale made in pursuance of the agreement does not take effect by relation at its date.

4. A mortgage of personal property, consisting of goods in a retail store, executed in Kansas to secure the payment of certain promissory notes, is void as against creditors of the mortgagors by statute if the mortgage is not deposited in the office of the register of deeds of the county where the property is situated or the mortgagors reside, and is void independent of the statute if the mortgagors remained in possession of the goods by the terms of the mortgage, and continued to sell the goods mortgaged with the assent of the mortgagees.

This was an action brought by the assignee in bankruptcy of Keller and Gladding to recover of the Second National Bank of Leavenworth the value of certain property alleged to have been transferred to it by them in fraud of the provisions of the Bankrupt Act.

On the trial, evidence was introduced on the part of the plaintiff tending to show that the bankrupts had made a conveyance of their property to the defendants when they were insolvent, and that the defendants had reasonable grounds for believing that the bankrupts were in this condition at the time, that the transfer was

not made in the ordinary course of their business, and that, on the first day of August, 1866, they executed a chattel mortgage on portions of their property to the cashier of the bank to secure the payment of two notes, each for four thousand dollars, belonging to that institution. This chattel mortgage provided that in case of default in the payment of the notes or interest, it should be lawful for the cashier of the bank to take possession of the property and sell the same. The mortgage was never deposited in the office of any register of deeds of any county in Kansas. The statute of Kansas in force at the time declared a mortgage of goods and chattels, not accompanied by an immediate delivery of the property and followed by an actual and continued change of possession, absolutely void as against creditors and subsequent purchasers and mortgagees in good faith unless the mortgage or a copy thereof was forthwith deposited in the office of the register of deeds in the county where the property

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was situated, or if the mortgagor was a resident of the state, then in the county of which he was a resident. [Footnote 1]

Thereupon evidence was given on the part of the defendants tending to show that the bankrupts, in conversations preliminary to the execution of the chattel mortgage for the purpose of securing their existing indebtedness to the bank, as well as to obtain future advances, promised its president to deliver to the bank whenever it should desire the entire stock of goods which they might have at the time on hand; that in February, 1867, in pursuance of this agreement, they delivered a portion of their stock, amounting in value to $2,542, and in July following they turned over the balance to the bank.

Evidence was also given tending to show that the bankrupts continued to sell the goods included in the mortgage, and all other goods at their store, with the consent of the defendants, until the transfer in July, 1867, and that this was contemplated by the parties when the mortgage was made.

The defendants thereupon prayed the court to instruct the jury that if they

"believe from the evidence that the conveyance by Keller and Gladding, in July, 1867, was made in pursuance of the original agreement between them and the bank, they are to regard the sale or transfer as valid, and not [as made] in contemplation of evading the provisions of the bankrupt law."

The court refused to give the instruction, and the defendants excepted. The correctness of this refusal was the question presented for consideration in this Court. The plaintiff obtained judgment, and the defendants brought the case here by writ of error.

MR. JUSTICE FIELD, after stating the case, delivered the opinion of the Court, as follows:

The question presented for our consideration arises upon the refusal of the circuit court to give the instruction

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prayed, and it is one easily answered. It would have been error to have given the instruction, for it assumes that there was an original valid agreement between the parties that the plaintiffs should deliver to the bank the entire stock of goods when desired.

In the first place, the record does not disclose that any such agreement was established; it only discloses that the evidence introduced tended to show that, in conversations preliminary to the execution of the mortgage, the bankrupts made a promise to the president of the bank to that effect.

Courts cannot assume in their instructions to juries that material facts upon which the parties rely are established unless they are admitted or the evidence respecting them is not controverted. The courts would otherwise encroach upon the appropriate and exclusive province of juries.

In the second place, the supposed agreement, if established, was void as against other creditors of the bankrupts. It did not create any lien upon the property or entitle the bank to any preference over other creditors in the event of the debtors'

being afterwards proceeded against under the Bankrupt Act. The subsequent sale, even if made in pursuance of the agreement, did not take effect by relation at its date. Transfers of personal property, situated as in this case, only take effect as against creditors from the delivery of the property to the purchaser.

The stipulation in the chattel mortgage providing that in case of default in the payment of the notes or interest, it should be lawful for the cashier of the bank to take possession of the property and sell the same, does not aid the defendants for two reasons, both equally conclusive. 1st, the mortgage was never deposited in the office of the register of deeds of the county where the property was situated or the mortgagors resided, and was therefore void as against creditors under the statute of Kansas. 2d, the mortgagors remained in possession of the goods notwithstanding the mortgage and by its terms, and the testimony tended to show that they continued to sell the goods, with the assent of the defendants, until the transfer in July, 1867. The

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court could not assume the instrument to be valid in the face of this testimony, for if the facts were found by the jury which the testimony tended to establish, the mortgage was fraudulent and void as against creditors. [Footnote 2]

In any view of the case, the instruction prayed was properly refused.

Judgment affirmed.

[Footnote 1]

Compiled Laws of Kansas of 1862, p. 723.

[Footnote 2]

Griswold v. Sheldon, 4 Comstock 581; *Wood v. Lowry,* 17 Wendell 492.