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Appellant : Traer

Respondent : Clews

Judgement :

Traer v. Clews - 115 U.S. 528 (1885)
U.S. Supreme Court Traer v. Clews, 115 U.S. 528 (1885)

Traer v. Clews

Argued November 9-10, 1886

Decided November 23, 1885

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I N ERROR TO THE SUPREME COURT

OF THE STATE OF IOWA

SYLLABUS

A suit in which the purchaser from a trustee in bankruptcy of property of the bankrupt estate asserts title against a defendant claiming an adverse interest therein, though brought more than two years after the cause of action accrues to the trustee, is not barred by the limitation of two years prescribed by Rev.Stat. 5057 if the defendant acquired title by a fraud practiced by him on the trustee and the fraud was concealed by the defendant from the trustee and the purchaser until within two years before the suit was brought.

When an incorporated company has been dissolved and its affairs are in the course of liquidation, a sale and transfer by a stockholder of all his claims and demands on account of his stock is not void, because the vendee may be compelled to bring suit to enforce his right to such claims and demands.

There is nothing in the policy or terms of the Bankrupt Act which forbids the bankrupt from purchasing from the trustee property of the bankrupt estate.

A trustee in bankruptcy may sell the unencumbered property of the estate on credit when he thinks it most for the interest of the creditors.

Henry Clews, the defendant in error, on January 17, 1878, brought this suit in the Circuit Court of Linn County, Iowa, against John W. Traer and others to recover the value of fifty shares, of one thousand dollars each, of capital stock in the Cedar Rapids Northwestern Construction Company and the dividends which had been declared thereon. The stock had been originally subscribed and owned by Clews. The construction company was organized in 1870. The dividends sued for were declared, ten thousand dollars in December, 1873, and five hundred dollars in January, 1874, and were in the treasury of the company ready to be paid out to the holder of the stock. On November 28, 1874, Clews was adjudicated a bankrupt, and his stock in the construction company, with the dividends which had been declared thereon, passed to J. Nelson Tappan, trustee of his bankrupt estate. In February, 1875, the construction company went into voluntary dissolution and liquidation, and John W. Traer, John F. Ely, and William

Green were appointed trustees to settle up its affairs and divide its assets among its stockholders according to their interest therein. Traer, knowing that the dividends above mentioned had been declared, and the same being unknown to Clews and Tappan, his trustee in bankruptcy, on March 4, 1876, for the consideration of twelve hundred dollars, through the intervention of one Armstrong, who did not disclose his agency, purchased of Tappan, the trustee, the fifty shares of stock above mentioned. Traer alleged and it appeared that the purchase was made by him for his wife, Mrs. Ella D. Traer. Afterwards, on December 6, 1877, Tappan, the trustee in bankruptcy, assuming, as it may be supposed, that the sale of the stock made at the instance of Armstrong was void for fraud, sold all his claims and demands on account of the stock to Clews, who, on January 17, 1878, brought this suit. John W. Traer and others, who had been officers and trustees of the construction company, were made defendants to the original petition. The defendants demurred to the petition on the ground that it did not state facts sufficient to entitle the plaintiff to the relief demanded. The court overruled the demurrer. Afterwards, the plaintiff having discovered that on March 4, 1876, the stock in the construction company had been assigned to Ella D. Traer, on October 28, 1879, amended his petition by making her a party defendant to his suit. Upon final hearing in the Circuit Court for Linn County, the suit was dismissed as to all the defendants except John W. Traer and Ella D. Traer, and judgment was rendered against them for $15,000. Traer and his wife appealed from this judgment to the Supreme Court of Iowa, which affirmed the judgment of the circuit court. By the present writ of error, Traer and wife ask a review of the judgment of the Supreme Court of Iowa.

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MR. JUSTICE WOODS delivered the opinion of the Court. After stating the facts in the language above reported, he continued:

The defendant in error questions the jurisdiction of this Court. As the record shows that the plaintiff in error dispute the validity of a transfer to the defendant in error of the property in controversy, made to him by a trustee in bankruptcy, appointed

under and deriving his authority from the Bankrupt

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Act, and as the question is made whether the suit is barred by the limitation prescribed by the same act, we are of opinion that the jurisdiction of the court to decide these questions is clear. *Factors' & Traders' Insurance Co. v. Murphy,* 111 U. S. 738 ; *New Orleans, Spanish Fort & Lake Railroad Co. v. Delamore,* 114 U. S. 501 .

The record does not leave it in doubt that the purchase by Traer from Tappan of the rights incident to the stock in the construction company belonging to the bankrupt estate of Clews was brought about by the fraudulent practices of Traer. As stated by the Supreme Court of Iowa, he was a stockholder, officer, and trustee of the construction company, and had been from the first actively engaged in the management of its affairs. As trustee, he was solely entrusted with the custody of the assets, books, and papers of the corporation, and had full and complete knowledge of all matters pertaining to the assets and business of the company. He knew that the plaintiff or his bankrupt estate was entitled to dividends amounting to at least $10,500, received by Traer upon entering upon the discharge of his duties as trustee. The assets of the company, much of them being in money, he held as a trustee for the stockholders, being so constituted by the act of dissolution of the corporation. He misrepresented the value of these assets to both Tappan and Clews, and induced them to believe that the sum to which they were entitled did not greatly exceed $1,200 in value, the amount of the consideration of the assignment of the stock by Tappan. He employed attorneys and agents to negotiate for the purchase of the stock who concealed from Tappan that the purchase was made for Traer or his wife. These agents knew that they were making the purchase for Traer or his wife, and neither of them at any time was a good faith purchaser. In all of the transactions connected with the purchase of the stock, Traer acted as the agent of his wife, who knew that her husband was a trustee holding the assets for the stockholders of the construction company, and knew their value, and was guided in her purchase by his advice and direction. She knew that Tappan was ignorant of the value of the assets, and she had knowledge

of

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the devices used by her husband to secure the purchase of the stock and dividends.

By means of these fraudulent devices, she purchased from Tappan, for the price of $1,200, property which the state circuit court found to be of the value of $15,000. The charge of fraud made in the petition was therefore fully sustained.

Among other defenses pleaded by Ella D. Traer was the following:

"That plaintiff's pretended right of action herein accrued in favor of plaintiff's assignor, J. Nelson Tappan, as trustee in bankruptcy of plaintiff's estate, more than two years before the commencement of this suit against this defendant and more than two years before she was made a party defendant herein, and that this action is fully barred as to her by the provisions of the act of Congress in that behalf, and was so barred before she was made a party defendant herein."

This plea sets up the bar prescribed by the second section of the Bankrupt Act, now forming 5057 of the Revised Statutes, which declares:

"No suit either at law or in equity shall be maintained in any court between an assignee in bankruptcy and a person claiming an adverse interest touching any property or rights of property transferable to or vested in such assignee unless brought within two years from the time the cause of action accrued for or against such assignee."

The suit was brought against John D. Traer within two years after the fraudulent purchase and transfer of the stock and dividends, but Mrs. Traer was not made a party to the suit until after the lapse of three years and a half from the time of the purchase and transfer. The question is presented by one of the assignments of error whether, upon the circumstances of this case, the suit was barred as to Mrs. Traer.

The amended petition filed in the case on October 28, 1879, the day after Mrs. Traer had been made a defendant, averred that John W. Traer, while holding the office of trustee of the construction company, falsely represented to Tappan that there were no dividends due the estate of Clews from the stock held by him in the construction company, and falsely and fraudulently concealed from him the true condition of the company with the intent of undervaluing the stock and dividends

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declared thereon; that Traer and his wife employed one Armstrong to purchase for Mrs. Traer the said stock and dividends; that Armstrong took from Tappan an assignment of the certificate of stock to Mrs. Traer; that he forwarded the certificate to one Howard, whom Traer and his wife had previously employed, and Howard, following the instructions of Traer and his wife, carried the certificate to the headquarters of the construction company at Cedar Rapids and demanded of Traer, as trustee, the dividends and interest thereon, whereupon Traer paid over to Howard, his own and his wife's attorney, the sum of $11,913.75 on account of said dividends and interest, and Howard, while pretending to act for Armstrong,

"carefully concealed from those who might inform the said plaintiff's trustee in bankruptcy and from the papers and receipts that he was acting as the attorney for John W. Traer and Ella D. Traer his wife,"

and that after receiving said sum of money and receipting the vouchers prepared by Traer, as trustee, he paid back the money to Traer and his wife, less the amount of his own share as co-conspiratory and attorney. Afterwards, it was alleged, Traer transferred the stock to his wife upon the books of the company.

These averments show not only a fraudulent concealment of the value of the stock and dividends from Tappan by Traer, acting as agent for his wife, but a carefully devised plan by which the payment of the dividends to Mrs. Traer was concealed from Tappan, and no trace of such payment left upon the books and vouchers of the construction company. Subsequently, and before the trial of the case, the following amendment was made to the petition:

"That as to the matters and things herein set forth as a cause of action against the said Ella D. Traer, the said fraudulent transactions with which she was connected and her part therein were studiously concealed from the plaintiff and his assignor, and he had no means of discovering the same, nor had his assignor any means of discovering the same until the same were disclosed upon the examination of John W. Traer, as witness in this action, on the 24th day of September, 1879; that the plaintiff and his assignor did not know of the said fraud

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and the fraudulent acts of the defendant Ella D. Traer until the same were made known on the said examination."

No issue was taken on this amendment.

The state court having entered a general finding and judgment against the defendants John W. Traer and Ella D. Traer, his wife, the facts set out in the pleadings of the plaintiff, so far as they are necessary to support the judgment, must be taken as established by the evidence. The question is therefore do the facts alleged constitute a good reply to the plea of the two-years limitation filed by Mrs. Traer? We think they do. The fraud by which Mrs. Traer succeeded in purchasing from Tappan for $1,200 property to which he had the title worth $15,000 must necessarily have been a fraud carried on by concealment from Tappan of the true value of the property purchased. Such is the averment of the plaintiff's pleadings. But not only was fraudulent concealment in accomplishing the fraudulent purpose averred, but also a studious concealment from the plaintiff, Clews, and Tappan, the trustee, of the connection of Mrs. Traer with the fraud, and their want of means to discover the fraud, until it was revealed by the examination of John W. Traer, on September 24, 1879. The case is substantially the same, so far as the question now in hand is concerned, as that of *Bailey v. Glover,* 21 Wall. 342. The averment of fraudulent concealment in that case was, as shown by the report, as follows:

"The bill alleged that the defendants kept secret their said fraudulent acts and endeavored to conceal them from the knowledge both of the assignees and of the said Winston & Co., creditors of the bankrupt, whereby both were prevented from obtaining any sufficient knowledge or information thereof until within the last two years, and that, even up to the present time, they have not been able to obtain full and particular information as to the fraudulent disposition made by the bankrupt of a large part of his property."

The court in that case, upon demurrer, held in effect that these averments were sufficient to take the case from the operation of the same limitation which is set up in the present case. In delivering the judgment of the court, MR. JUSTICE MILLER said:

"We hold that when there has been no negligence or

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laches on the part of a plaintiff in coming to a knowledge of the fraud which is the foundation of the suit, and when the fraud has been concealed or is or such character as to conceal itself, the statute does not begin to run until the fraud is discovered by or becomes known to the party suing or those in privity with him."

So in the case of *Rosenthal v. Walker,* 111 U. S. 185 , the plaintiff averred that

"both the said Carney and the defendant kept concealed from him, the said plaintiff, the fact of the said payment and transfer of the aggregate sum of $30,000 . . . and the fact of the sale, transfer and conveyance of the said goods, . . . and that he, the said plaintiff, did not obtain knowledge and information of said matter until the 29th day of November, 1879, and then, for the first time, the said matters were disclosed to him and brought to his knowledge."

These averments were held sufficient on exception to the petition to take the case out of the bar prescribed by 5057 of the Revised Statutes. The case of *Bailey v. Glover* has never been overruled, doubted, or modified by this Court. On the contrary, in *Rosenthal v. Walker* it was reaffirmed and was distinguished from the

case of *Wood v. Carpenter,* 101 U. S. 135 , relied on by the appellants. The authorities cited are in point and fully support our conclusion that upon the pleadings and evidence, the suit of the plaintiff was not barred by the limitation prescribed by 5057 of the Revised Statutes.

The next contention of the appellants is that the transfer executed by Tappan to Clews was not a sale to him of a right of property in the stock of the construction company and of the dividends, but merely the transfer of a right to sue Traer and his wife for a fraud, and was therefore void. The assignment was as follows:

"In consideration of the sum of $1 to me paid by Henry Clews, the receipt whereof is hereby acknowledged, and for other good and valuable considerations, I hereby sell, assign, transfer, and set over unto the said Henry Clews any and all claims and demands of every name, nature, and description that I may now have or be entitled to on account of the fifty shares of the capital stock in the Cedar Rapids & Northwestern

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Construction Company which was subscribed for said Henry Clews."

This paper will not in our opinion bear the construction put upon it by the appellants. Treating the transfer to Mrs. Traer as void, its evident purpose is to assign to Clews whatever property and rights were incident to the ownership of the stock. When this paper was executed, the corporation known as the construction company had been dissolved, and its affairs were in the course of liquidation. The ownership of the stock simply entitled the holder to a proportionate interest in the unpaid dividends which had been declared before the dissolution of the company and to a *pro rata* share of the proceeds of the company's assets, and in this consisted its sole value. The language of the assignment, by which Tappan undertook to transfer to Clews all claims and demands which Tappan then had or might be entitled to on account of the fifty shares of stock in the company which had been subscribed by Henry Clews, was aptly chosen to convey the dividends which had been declared, and an interest in the property of the company in

proportion to the fifty shares of stock. It did not transfer a mere right to sue Traer and his wife. That right was simply an incident to the transfer of substantial and tangible property.

The rule is that an assignment of a mere right to file a bill in equity for fraud committed upon the assignor will be void as contrary to public policy and savoring of maintenance. But when property is conveyed, the fact that the grantee may be compelled to bring a suit to enforce his right to the property does not render the conveyance void. This distinction is taken in the case of *Dickinson v. Burrell,* L.R. 1 Eq. 337. The facts in that case were that a conveyance of an interest in an estate had been fraudulently procured from Dickinson, by his own solicitor, to a third party for the solicitor's benefit, and for a very inadequate consideration. Dickinson, ascertaining the fraud by a conveyance which recited the facts, and that he disputed the validity of the first conveyance, transferred all his share in the estate to trustees for the benefit

of himself and children. The trustees filed a bill to set aside the fraudulent conveyance upon repayment of the consideration money and interest and to establish the trust. The Master of the Rolls, Lord Romilly, in sustaining the bill, said:

"The distinction is this: if James Dickinson had sold or conveyed the right to sue to set aside the indenture of December, 1860, without conveying the property or his interest in the property, which is the subject of that indenture that would not have enabled the grantee, A. B., to maintain this bill, but if A. B. had bought the whole interest of James Dickinson in the property, then it would. The right of suit is a right incidental to the property conveyed."

The Master of the Rolls then refers to the cases of *Cockell v. Taylor,* 15 Beavan 103, and *Anderson v. Radcliffe,* El. Bl. & El. 806, where he says the same distinction is taken.

The rule was expounded by Mr. Justice Story in *Comegys v. Vasse,* 1 Pet. 193, as follows:

"In general it may be affirmed that mere personal *torts,* which die with the party, and do not survive to his personal representatives, are not capable of passing by assignment, and that vested rights *ad rem* and *in re,* possibilities coupled with an interest, and claims growing out of and adherent to the property, may pass by assignment."

P. 26 U. S. 213 .

In *Erwin v. United States,* 97 U. S. 392 , MR. JUSTICE FIELD, who delivered the opinion of the Court, said:

"Claims for compensation for the possession, use, or appropriation of tangible property constitute personal estate equally with the property out of which they grow, although the validity of such claims may be denied, and their value may depend upon the uncertainties of litigation or the doubtful result of an appeal to the legislature."

P. 97 U. S. 396 . *And see McMahon v. Allen,* 35 N.Y. 403, decided in the state where the assignment in question was made. *Weire v. City of Davenport,* 11 Ia. 49, and *Gray v. McCallister,* 50 Ia. 498, decided in the state where the suit was brought. *See also* a discussion of the subject in *Graham v. Railroad Co.,* 102 U. S. 148 .

Applying the rule established by these authorities, we are of opinion that so far as the question under consideration is

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concerned, the assignment of Tappan to Clews was the transfer not merely of a naked right to bring a suit, but of a valuable right of property, and was therefore valid and effectual.

It is next insisted by the plaintiffs in error that Clews acquired no title to the dividends and other property which Tappan attempted to transfer to him, because (1) he had not been discharged as a bankrupt at the time of the transfer, and (2) because Tappan had no authority to sell the stock and its dividends for a bond or obligation to pay, as the evidence shows was the case, but only for cash.

Whether Clews had been discharged at the date of the transfer to him is immaterial. After his adjudication as a bankrupt and the surrender of his property to be administered in bankruptcy, he was just as much at liberty to purchase, if he had the means, any of the property so surrendered as any other person. The policy of the Bankrupt Act was, after taking from the bankrupt all his property not exempt by law, to discharge him from his debts and liabilities and enable him to take a fresh start. His subsequent earnings were his own. A bankrupt might often desire, out of the proceeds of his exempted property, or out of his means earned since his bankruptcy, to purchase property which he has surrendered to the assignee. This he might do, and there is nothing in the letter or policy of the Bankrupt Act which forbid his doing so until after his discharge. For, having complied with the law, as it must be presumed he has, he is, after the lapse of six months, entitled as a matter of course to his discharge. His right to purchase property surrendered cannot therefore depend on his actual discharge, and in this respect he stands upon the same footing as any other person.

As to the second ground upon which the validity of the title of Clews is questioned, it is sufficient to say that by the bankrupt law, 5062 Rev.Stat., it is provided:

"The assignee shall sell all such unencumbered estate, real and personal, which comes to his hands on such terms as he thinks most for the interest of the creditors."

If therefore the plaintiffs in error occupied the position of guardians for the creditors of the bankrupt estate, and had the

right in this suit to question the administration of the trustee, the section referred to would be a sufficient answer to the exception taken to the sale by Tappan to Clews of the property which is the subject of this controversy. We think, therefore, that no ground is shown on which the title of Clews can be successfully assailed.

Other points have been raised and argued by counsel, but as these do not present any federal question, it is not our province or duty to pass upon them. *Murdock v. City of Memphis,* 20 Wall. 590. All the federal questions presented by the record were, in our judgment, rightly decided by the Supreme Court of Iowa.

Judgment affirmed.