Sparhawk Vs. Yerkes

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Appeal No. : 142 U.S. 1

Appellant : Sparhawk

Respondent : Yerkes

Judgement :

Sparhawk v. Yerkes - 142 U.S. 1 (1891)
U.S. Supreme Court Sparhawk v. Yerkes, 142 U.S. 1 (1891)

Sparhawk v. Yerkes

Nos. 56, 57

Argued October 28, 1891

Decided December 7, 1891

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APPEALS FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SYLLABUS

In December, 1871, Y., who was a member of the stock exchanges in New York and in Philadelphia, was declared to be a bankrupt. At that time, his seat in the New York Exchange was worth about $4,000, and the other about $2,000. By the rules of each, membership, in case of failure, was suspended until settlement with its members who were creditors, and the seat in each was liable to be sold and the proceeds applied to the payment of the debts of such of its members. At the time of his failure, the indebtedness of Y. to members of the New York Exchange amounted to about $8,500, and to members of the Philadelphia Exchange to nearly $22,000. The assignees notified each exchange of their appointment, but took no steps to adjust the debts or to acquire the seats, which were appraised as of no value. Within two years, Y. notified them that assessments on the seats were overdue. They told him he was the proper party to pay them, and that what he might pay would be recognized as properly to be refunded in case the seats should be sold by them. Y. was discharged in bankruptcy in 1873. From his private means he paid all assessments overdue and from time to time maturing, and eventually settled with all the creditor members. Such members had proved their

debts against his estate in bankruptcy, and in the several settlements he had the benefit of the dividends (28 percent) paid by the assignees. Having thus settled all such debts, he was, in June, 1883, reinstated in his membership in the Philadelphia board, and in December, 1883, in his membership in the New York board. At that time, the value of the Philadelphia seat was about $6,000, and of the New York seat about $20,000. In November, 1885, the assignees filed bills against Y. and each board to have these memberships decreed to be assets of the bankrupt's estate.

HELD

(1) That the assignees must be deemed to have elected not to accept these rights as property of the estate.

(2) That Y. was not their trustee in expending his own money to give value to a property which was worthless and abandoned.

(3) That the assignees could not be permitted to avail themselves of the result of his action, or to take the property to work out a return of the dividends paid to these particular creditors.

The Court stated the case as follows:

Charles T. Yerkes, Jr., made a voluntary assignment for the benefit of creditors to Joseph M. Pile, October 21, 1871. On December 13, 1871, he was adjudicated a bankrupt in the District Court of the United States for the Eastern District of Pennsylvania on a creditors' petition, filed November 10, 1871, and appellants were appointed his assignees January 12th, and the assignment of the bankrupt estate was duly made to them January 24, 1872. In February, 1872, the bankruptcy court directed a transfer by Pile of the estate unadministered by him to the bankrupt's assignees, and this was subsequently executed and delivered. Ninety-nine creditors proved debts in the aggregate sum of $829,198.45, upon which dividends were declared and paid as follows: July 19, 1872, ten percent, May 12, 1873, nine percent; April 5, 1878, eight percent, and January 30, 1880, one percent. At the time of the adjudication, Yerkes was a member of the New York and Philadelphia Stock Exchanges, which, it is conceded, were unincorporated associations. These memberships were included in the schedules filed in the bankruptcy proceedings, and therein stated to be "of no specific value," and in the inventory and appraisement of the estate subsequently made they were appraised as of no value. The

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Philadelphia membership was then worth not over $2,000, and the New York membership about $4,000, but the bankrupt was indebted to members of the Philadelphia Stock Exchange in the sum of $21,842.11, and to members of the New York Stock Exchange in the sum of $8,522.99, and under the rules of both associations, membership was suspended until settlement with creditors, and,

unless settlements were made as provided, the seats were to be sold and the proceeds divided among the creditor members. The assignees sent to the associations notice of their appointment in January, 1872, and an additional notice to the New York exchange in May, 1873, stating that it was their duty to realize the value of the seat, and asking the president to indicate what form, if any, was prescribed by the rules for transfer or sale. They also addressed a communication to the Philadelphia board, and perhaps to both, in November, 1883.

At some time within two years after the assignment, Yerkes brought to the assignees a notice of an assessment or charge due to one of the associations on account of the membership, and asked them what they were going to do about its payment. They answered that as the claim had been made upon him, they thought he was the proper party to pay it, and that anything he paid would be recognized as properly to be refunded out of anything the assignees might realize for the seats. On October 3, 1873, the bankrupt was discharged. In 1876, *Hyde v. Woods,* 94 U. S. 523 , was decided, sustaining the validity of rules of stock exchanges providing for the application of the proceeds of sales of memberships to the debts due by members, which the assignees in these cases had previously been advised by counsel was the law. As testified by one of the assignees, they had not the slightest expectation of paying dividends aggregating over thirty-five percent, and did not suppose that they could realize anything from the Philadelphia seat, because the indebtedness of the bankrupt to its members was largely in excess of its value, and of any dividend they expected his estate would pay, which was also true of the New York seat. They supposed *Hyde v. Woods* ruled the New York as well as the Philadelphia case, and

were instructed by counsel that the seats could not be made available so long as they were encumbered with an indebtedness to members of the guilds to which Mr. Yerkes belonged, and they did not propose to take any steps until they learned, in the fall of 1883, of Judge McKennan's decision, announced the 28th of the preceding March, in *In re Werder,* 15 F. 789.

Yerkes testified to several conversations, in which it was generally conceded by the assignees that they had no rights in the memberships, and that he had no idea that they ever expected to make such claim, while one of the assignees said that after the decision in *Hyde v. Woods,* there was a conversation between Yerkes and them in which it was admitted that for the time being, their proceedings were suspended as to further action, but that they never withdrew the claim.

From 1871 to 1876, the assignees took no steps to compel a conveyance or sale of the seats and assumed no liability or responsibility for the assessments and charges, nor did they for eight years thereafter. In the meantime, Yerkes, by personal solicitation, persuaded the members of the associations to withhold for his personal benefit any demand for a sale. He paid from year to year the periodical assessments, and also, either in money out of his own earnings or in services, the debts due the members, which debts had been reduced by the dividends paid by the estate. On June 18, 1883, the bankrupt was reelected to membership in the Philadelphia exchange, and on December 27, 1883, to membership in the New York exchange, having made his settlements some time before. The value of the seats in both exchanges increased considerably in the lapse of time. In the New York board, the value increased to some $20,000 in 1883, and in the Philadelphia board to about $6,000 in the same year. Subsequently the New York seats rose in value to between thirty and thirty-four thousand dollars and the Philadelphia seats to between five and eight thousand dollars. As has been stated, by the rules of the exchanges, insolvency of a member, or a failure to fulfill his contracts (bankruptcy being also specifically named in the Philadelphia rules) in effect worked suspension of membership,

and there was a provision for the sale of seats after one year, on failure of the suspended member to settle with his creditors. In the rules of the New York board, there was a provision for an extension of the time for settlement. Under both sets of rules, a suspended member might be reinstated if the governing committee reported favorably upon his application. On April 28, 1884, the assignees presented a petition in the bankruptcy court for the sale of the memberships, which

was dismissed, and on November 14, 1885, filed two bills in equity to accomplish the same purpose against the bankrupt and members of the New York and Philadelphia boards. The bills prayed that it might be decreed that the memberships were assets of the bankrupt's estate, and vested in the complainants as his assignees; that they be sold, and complainants' vendees admitted to membership in place of Yerkes; that, if the court should determine that Yerkes was entitled to be reimbursed for any moneys paid by him for or on account of the memberships, such reimbursement should be decreed out of the proceeds of the sale, or if it should be determined that Yerkes was entitled to retain the memberships, he be ordered to account for the market value of the same and to pay complainants such amounts as they had paid as dividends upon the debts owed by Yerkes to his fellow-members of the association at the time of his insolvency and bankruptcy. The cases were brought to issue, evidence taken, and a master's report made, to which exceptions were filed, and hearing had thereon. The master (Mason) held that by virtue of the assignment in bankruptcy, the assignees' rights in this peculiar property in these memberships were to settle and arrange the bankrupt's affairs to the satisfaction of his creditors, members of the associations, and, having made satisfactory proof of settlement, to apply for readmission, which could be obtained with the consent of two-thirds of the governing committee in New York, and of at least fourteen out of eighteen in Philadelphia, or, if they failed to effect a settlement in one year, then to have the memberships sold and the proceeds paid *pro rata* to the bankrupt's creditors in the exchanges; that the assignees exercised neither of these rights, and the memberships

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to which, ten years after his discharge, the bankrupt was again admitted, constituted in effect after-acquired property; that there was no assumption of original rights *de jure,* and that the lapse of time was fatal to the assignees' claim, particularly in view of the section of the bankrupt law as to the limitation of actions. The exceptions to the master's report were overruled, and the circuit court dismissed the bills upon the ground of laches. From these decrees appeals were

prosecuted to this Court.

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MR. CHIEF JUSTICE FULLER, after stating the facts as above, delivered the opinion of the Court.

In *Hyde v. Woods,* 94 U. S. 523 , it was ruled that the ownership of a seat in a stock and exchange board is property, not absolute and unqualified, but limited and restricted by the rules of the association; that such rules, in imposing the condition upon the disposition of memberships that the proceeds should be first applied to the benefit of creditor members, are not open to objection on the ground of public policy or because in violation of the Bankrupt Act, and that, in the case of the bankruptcy of a member, his right to a seat would pass to his assignees, and the balance of the proceeds upon sale could be recovered for the benefit of the estate. While the property is peculiar, and in its nature a personal privilege, yet such value as it may possess, notwithstanding the restrictions to which it is subject, is susceptible of being realized by creditors. *Ager v. Murray,* 105 U. S. 126 ; *Stephens v. Cady,* 14 How. 528; *Powell v. Waldron,* 89 N.Y. 328; *Belton v. Hatch,* 109 N.Y. 593; *Habenicht v. Lissak,* 78 Cal. 351; *Weaver v. Fisher,* 110 Ill. 146. Under the rules of the exchanges in question, suspension of membership followed upon insolvency, and if the debts due

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members were not settled, the seats were to be sold, and the proceeds, after the charges due the associations were deducted, were to be distributed *pro rata* among those creditors. Reinstatement in or readmission to membership was provided for upon a settlement in full by the suspended member and the action of the governing board in his favor. By the assignment in bankruptcy, all the bankrupt's rights of action for property or estate and of redemption, together with his right and authority to sell, manage, dispose of, and sue for the same, as they existed at the time the petition was filed, passed to the assignees. Rev.Stat. 5046. They might therefore, as the master pointed out, have settled and arranged the

bankrupt's affairs with the creditor members, and applied for readmission and a transfer in such manner, with the assent of the exchanges, as would have enabled them to avail themselves of the seats. They could have properly required the bankrupt to assist them in taking the necessary steps as between him and them and the associations, and, in case of necessity, might have resorted to the courts. They were not bound, however, to accept property of an onerous and unprofitable nature which would burden instead of benefiting the estate, and they could elect whether they would accept or not after due consideration and within a reasonable time, while if their judgment was unwisely exercised, the bankruptcy court was open to the creditors to compel a different conclusion. *Glenny v. Langdon,* 98 U. S. 20 ; *American File Co. v. Garrett,* 110 U. S. 288 .

At the time of the filing of the petition in bankruptcy, November 10, 1871, and of the bankrupt's discharge, October 3, 1873, these suspended memberships were confessedly of no value to the estate, and were so appraised, because no possible dividend could be paid equal to the excess of the debts due members over the then value of the memberships. It may be assumed that the assignees regarded the expenditure of money in the payment of annual dues and charges and in settlement with creditor members as not justifiable under the circumstances. At all events, for twelve years after their appointment and ten years after the bankrupt's discharge,

they took no steps to obtain possession, and asked no assistance in that regard from either the bankrupt or the courts, made no payments to the associations, and attempted no settlements with the creditor members; considered the realization of anything as substantially impracticable in view of the situation and of judicial decision, and contented themselves with the hope that masterly inactivity might enable them to assert a claim if, by the efforts of the bankrupt, the load of debt which weighed down the right to the seats was lifted, and in the progress or years the value of such seats happened to increase instead of diminish. Nor did they seek a sale, nor to compel the creditor members to realize upon or agree to a valuation of the seats and prove only for the balance of their claims, under

Rev.Stat. 5075, if applicable, or otherwise to gain the benefit of such reduction as might thus be obtained; but, on the contrary, allowed these creditors to prove their debts in full, and paid dividends thereon, without objection. Except that they notified the exchanges of their appointment, they did nothing in the way of taking possession or of the preservation of the property, and for several years prior to the reinstatement they communicated neither with the bankrupt nor the exchanges in regard to the matter. Their conduct can be viewed in no other light than that of an election not to accept these rights as property of the estate.

The policy of the bankrupt law 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. Henceforward his earnings were his own, and, after his adjudication and the surrendering of his property to be administered, he was as much at liberty to purchase any of the property so surrendered as any other person. *Traer v. Clews,* 115 U. S. 528 .

In order to reacquire his seats, Yerkes paid the annual dues to the exchanges and the assessments for their gratuity or trust funds -- a scheme of life insurance for the benefit of members, which added to the value of the memberships when payments were kept up, and which funds were established after

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the bankruptcy. He induced his creditor fellow-members, out of personal consideration for him and for his personal benefit, to withhold a demand for a sale under the rules, and finally paid them all in full. Those payments were made in cash or personal services out of his earnings subsequent to his bankruptcy, and, as appears from his sworn answer as well as his testimony, under the belief that the assignees never expected to set up any claim to the seats. The assignees admit in substance that they knew that Yerkes wished to retain his seats; that he was of opinion that they could do nothing with them; that he was preventing by his own exertions any sale by the board creditors, and that he was paying off their claims. Thus, by the devotion of his own time and earnings, this worthless and abandoned property became valuable, and the assignees acquiesced in the

transmutation, as it was accomplished, without action and without objection. It is to be observed that Yerkes was in no sense the agent or trustee for the assignees or for the creditors in thus expending his money and labor for the preservation of the seats. Whatever information he could impart or assistance he could render in facilitating the action of the assignees in the line of their duties was to be expected of him, and up to the time of his discharge he could have been compelled by summary order to assist in perfecting possession in the assignees of property which had passed to them and which they had accepted; but he was not bound to contribute his own time and money to the removal of burdens which they declined to assume and whose existence put the rights to readmission out of the category of available assets and justified the election of the assignees not to accept them.

We hold that the assignees, after sedulously avoiding for years any responsibility in the premises, the assumption of any relations to the exchanges, the taking of any steps to free the rights from encumbrance or to realize upon them as encumbered, and allowing the bankrupt, by the use of after-acquisitions, to create a value not theretofore possessed, cannot be allowed to come into a court of equity, and, in spite of

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laches and acquiescence of the most pronounced character, invoke its aid to wrest from him the fruit of his independent and lawful exertions and reap where they had not sown. Under such circumstances, they do not come with clean hands. Clearly the sale of the present memberships to a nominee of the assignees and the admission of such nominee upon the ouster of Yerkes cannot now be coerced, and if Yerkes' title is not open to attack, he cannot be decreed to account for the market value thereof to the extent, in whole or in part, of the dividends which the creditor members received. In order to obtain the seats, their claims had to be settled in full, and such settlement was not waived by their being proved in the bankruptcy proceedings without objection then or for thirteen years thereafter. The dividends were not paid in order to protect the rights of the assignees or to save the memberships, and while, by reason of the extinguishment of the debts *pro tanto,* Yerkes may be said to have paid less than he otherwise would, yet he paid

much more than the value of the seats at the time of the bankruptcy in addition to the amount of the dividends. The parties well understood that the dividends could not, at best, reach more than a certain percentage, and that the debts due the members of the association, after that percentage was deducted, far exceeded the value of the seats. The assignees deemed it unwise and impracticable to attempt to speculate upon a future rise in that value, and, declining to settle with the creditor members, to pay the periodical charges, and to enter into relations with the exchanges and those creditors, proceeded to close up the estate without regard to these remote expectancies, apparently with commendable promptitude. As we have said, they cannot now be permitted to avail themselves of the results of what Yerkes did and they did not do, nor can they lay hold of his property to work out a return of what the estate paid to these particular creditors in common with the others.

Decrees affirmed.

MR. JUSTICE BRADLEY and MR. JUSTICE GRAY did not hear the argument, and took no part in the decision of these cases.

MR. JUSTICE BREWER, with whom concurred MR. JUSTICE HARLAN, dissenting.

MR. JUSTICE HARLAN and myself dissent from the foregoing opinion and judgment.

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By the assignment in 1871, the memberships in the two exchanges were transferred to the assignees. They were then worth $6,000. By the rules of the exchanges, debts to members were a prior lien. Those debts then amounted to $30,365.10. In other words, the assignees took title to property worth $6,000, subject to a lien of $30,365.10. If then sold, the debts of the bankrupt would have been reduced by the amount of $6,000. By making the sale, the assignees would have assumed no special obligation for the balance of the debts having a lien

upon these memberships. They should have sold at once, or waited to see if there was a rise in value. They chose the latter. They never, in terms, relinquished their claim upon the property. The *ad interim* payments made by the bankrupt only kept alive certain insurance, which on his death would have inured to the heirs, and not gone to the assignees. Such payments therefore were wholly for his benefit, and not for the assigned estate or for the creditors.

The assignees have paid dividends aggregating 28 percent, or, to the creditors holding such liens, $8,502.22. The bankrupt (the assignor) availing himself of this payment, by services and money pays off the balance of these lien claims, and appropriates to himself the seats in the exchanges, now worth $35,000 to $42,000. The result is that the delay of the assignees, wise as it would seem from the increased value of the property, is adjudged an abandonment. Property then worth $6,000 is not appropriated to the reduction of the debts against the estate. On the contrary, the bankrupt gets the benefit of $8,500 paid out of the estate assigned for the benefit of creditors, uses that payment to reduce the claims against this property, and, paying off the balance, repossesses himself of the property, now worth over $35,000.

We see neither equity nor law in this conclusion, and therefore dissent.

MR. JUSTICE BRADLEY and MR. JUSTICE GRAY did not hear the argument, and took no part in the decision of these cases.