

ADLER and others v. ECKER, defendant, and BOOTH, garnishee.

(Circuit Court, D. Minnesota. ———, 1880.)

ASSIGNMENTS—RIGHT TO CONTEST.—Assignments for the benefit of creditors in the state of Minnesota are simply regulated by statute. The assignee is mere trustee, and the legality of the assignment may be contested by a creditor in the federal court.

SAME—FRAUDULENT INTENT—HOW SHOWN.—The validity of an assignment for the benefit of creditors, as affected by fraudulent intent, is to be determined by the intent of the assignor, and his contemporaneous fraudulent acts are evidence of such intent.

SAME—FRAUD.—Facts in this case *held* to show a fraudulent intent on the part of the assignor, and the assignment void.

*Rogers & Rogers*, for plaintiffs.

*Young & Newell*, for defendant and garnishee.

NELSON, D. J. Suit was brought by plaintiffs against Otto Ecker and judgment recovered. Garnishee proceedings were commenced against N. R. Booth, to whom Ecker had made an assignment for the benefit of creditors. After disclosure by the garnishee a supplemental complaint was filed by permission of the court under the statutes of the state of Minnesota, and it is charged that Ecker made the assignment to Booth to defraud creditors.

The questions presented for consideration are: *First*. Can this court entertain a suit against the assignee, Booth, who has given a bond to faithfully fulfil his trusts, and is amenable to the state court, by virtue of the statutes of the state of Minnesota regulating proceedings under assignments for the benefit of creditors? *Second*. Is the assignment to Booth fraudulent and void as to Ecker's creditors?

There is no law of the state authorizing assignments for the benefit of creditors, but such conveyances are recognized and regulated by the statute for better security. The assignee is selected by the assignor, and can only be removed for such dereliction of duty as would subject him to removal by a court of equity. In fact, the statutory enactment to this

extent is declaratory of the jurisdiction of a court of chancery over trustees, among whom are assignees under voluntary conveyances for the benefit of creditors.

The property in possession of such assignee is not *in custodia legis*, for the assignee is not an officer of the state court, but a trustee, subject to statutory provisions compelling him to execute his trust according to the terms prescribed by the assignor in the conveyance. The authority of the assignee depends upon the validity of the assignment, and is not conferred by the court. The right of a creditor or other person interested to contest the legality of a voluntary conveyance in a court of competent jurisdiction is not obstructed by the law prescribing the manner of executing assignments made for the benefit of creditors.

A creditor having a standing in the federal courts can contest the validity of such assignment, and a state law cannot deprive him of it.

It remains only to determine whether this assignment was made with intent to delay, hinder and defraud creditors.

The only intent which will determine the validity of an assignment is that of the assignor, at the time it is made, and contemporaneous fraudulent acts are evidence of this intent.

It is in proof that Ecker being insolvent, and owing debts amounting to more than double the value of his assets, took from his business, within four weeks before his assignment, a sum equal to one-half of the value of the property assigned, and erected with it a building upon a lot owned by his wife, and within a short time thereafter joined with his wife in giving a mortgage upon this property to his father-in-law for three times the amount of any debt owing either by him or his wife, and this mortgage and accompanying notes were sent to the father-in-law without any request on his part or any information on the subject until the papers were received. There is no evidence to counteract or explain why such mortgage was given for so large a sum, after one-fourth of his entire assets had been taken from his business in the manner above stated, and under circumstances calculated to show an

intent to put a portion of his available means beyond the reach of his creditors.

I have arrived at the conclusion that the assignment is fraudulent and void, and must give judgment for the amount claimed, with costs, and it is so ordered.

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**THE MERCHANTS' NATIONAL BANK OF ST. PAUL v. McLAUGHLIN, Sheriff, etc.**

(Circuit Court, D. Minnesota. April, 1880.)

**CHATTEL MORTGAGE—LOGS—SUFFICIENT DESCRIPTION.**—A chattel mortgage of certain logs described them as being the northerly or rear 1,250,000 feet lying in a certain creek, and marked with a certain mark, to be ascertained by commencing at the rear or northerly end of said logs, and counting along said stream southerly until the requisite number was so counted and set apart. *Held*, sufficiently definite.

**SAME—DEFAULT—RIGHT OF POSSESSION.**—After default in the conditions of a chattel mortgage the absolute right of possession is in the mortgagee.

**LIEN HOLDERS—RIGHTS OF.**—Where there are two funds, to both of which a prior lien holder may resort, while a junior lien holder can resort to but one, the former must first enforce his claim out of the fund to which the latter cannot have recourse.

**CONFUSION OF GOODS—INNOCENT MORTGAGEE.**—An innocent mortgagee will not be compelled to suffer by reason of the wrongful confusion of the goods by the mortgagor.

Cause tried before the court without a jury.

*Geo. L. & Chas. E. Otis*, for plaintiff.

*I. V. D. Heard, W. H. Grant and Wilson, Lawrence & Rogers*, for defendant.

**NELSON, D. J.** This action is brought against the defendant sheriff to recover damages for the conversion of personal property, consisting of logs, and lumber manufactured therefrom.

The sheriff defends under a seizure by virtue of certain writs of execution issued upon judgments obtained against the firm of McCaine Bros. & Barteau, and also sets up pro-