

The defendant insists that, in view of Brockway's pecuniary circumstances and his station in life, it is highly improbable that he could be *bona fide* indebted to Seybert for so large an amount as \$10,000. It is further urged that if any such indebtedness in fact existed, it was in the power of Daniel F. Seybert, the use party plaintiff, to show that indebtedness, to prove the consideration for which the note was given, and that the entire absence of such evidence raises a strong presumption against the *bona fides* of the note. It is for you to say what weight should be given to these considerations, which the defendant's counsel have pressed upon you.

The case, as submitted to the jury, turns upon the determination of two questions of fact. The one relates to the habits of Brockway in respect to sobriety; the other has regard to the character of the policy in suit.

(1) Was Beckwith S. Brockway, on March 8, 1868, "sober and temperate," and had he always been so?

(2) Was the policy in suit a *bona fide* risk upon the life of Brockway, or was it merely a speculative transaction on the part of Seybert—a wagering policy?

If you find both these questions of fact in favor of the plaintiff, your verdict will be for the plaintiff. But if your finding upon these questions of fact, or upon either of them, is against the plaintiff, your verdict must be for the defendant.— [*Ins. Law J.*]

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### STRETTELL *v.* BALLOU and others.

(*Circuit Court, D. Colorado.* October 15, 1881.)

#### 1. MINERAL LANDS — CLAIM — PARTITION — CIRCUIT COURT — JURISDICTION IN EQUITY.

The jurisdiction in equity of the circuit court of the United States is derived from the constitution and laws of the United States alone. Hence, a bill for partition, brought in the circuit court by the owner of an undivided interest in a mining claim, will be dismissed for want of jurisdiction, as the title to the land remains in the United States.

*M. B. Carpenter*, for complainant.

*Dixon & Reed*, for respondent.

McCrary, C. J. It has long been settled that the jurisdiction of the circuit courts of the United States in equity is derived from and defined by the constitution and laws of the United States; that it is the same in all the states, and is not to be affected or varied by the various statutes of the states, whereby the chancery powers and jurisdiction of state courts may be defined and regulated. This court

cannot, therefore, look to any state legislation as the source of its jurisdiction in equity. In *Boyle v. Zacharie*, 6 Pet. 658, Chief Justice Marshall, speaking for the supreme court, thus stated the rule: "And the settled doctrine of this court is that the remedies in equity are to be administered, not according to the state practice, but according to the practice of courts of equity in the parent country, as contradistinguished from that of courts of law, subject, of course, to the provisions of the acts of congress, and to such alterations and rules as, in the exercise of the powers delegated in those acts, the courts of the United States may from time to time prescribe." And see, to the same effect, *Robinson v. Campbell*, 3 Wheat. 212; *U. S. v. Howland*, 4 Wheat. 115; *Neves v. Scott*, 13 How. 271; *Noonan v. Lee*, 2 Black, 499; *Johnson v. Roe*, 1 McCrary, 162.\* It follows, from these authorities, that, unless the jurisdiction of this court can be derived from the constitution and laws of the United States alone, it does not exist.

Section 913 of the Revised Statutes of the United States declares that the modes of proceeding in equity causes shall be according to the principles, rules, and usages which belong to courts of equity, as contradistinguished from courts of law; and this language refers to the principles, rules, and usages by which the high court of chancery of England was governed at the time the judiciary act was passed.

It is very clear that, according to the general principles of equity jurisprudence, as administered in England at the time of the passage of the judiciary act, and as administered by courts of chancery in this country, except where a different rule is adopted by statute, the holder of a mere possessory interest in land, and not having title thereto, cannot maintain a bill for partition. Such a bill must be filed by one having title to a portion of the premises sought to be partitioned. *Horncastle v. Charlesworth*, 11 Simons, Ch. 314; *Williams v. Wiggand*, 53 Ill. 233; *Ross v. Cobb*, 48 Ill. 111.

It is not claimed that there is any act of congress conferring upon this court jurisdiction in equity of a bill for partition brought by the owner of an undivided interest in a mining claim where the legal title to the real estate remains in the United States. It follows that this bill must be dismissed for want of jurisdiction. If the statutes of the state of Colorado, relied upon by counsel for complainant, confer jurisdiction upon the courts of the state in a case of this character, the complainant must resort to those courts.

\*S. C. 1 FED. REP. 692.  
v.9,no.5—17

## BROWN, Assignee, etc., v. THE JEFFERSON COUNTY NAT. BANK.

(Circuit Court, N. D. New York. June 21, 1881.)

## 1. BANKRUPTCY—ILLEGAL PREFERENCES.

Proof of the existence of a desire on the part of the debtor that a particular creditor may succeed by the usual proceedings in a suit in obtaining a preference over other creditors, so that such preference may be maintained even as against proceedings in bankruptcy which may be subsequently commenced, is insufficient to establish that the debtor procured or suffered his property to be taken on legal process with intent to prefer such creditor.

## 2. SAME—SAME—AGENT—NOTICE.

A national bank, having reasonable cause for believing that a party whose paper it had discounted was insolvent, instructed a firm of attorneys, who were its debtors' attorneys, though of this it was not aware, to proceed to collect its debt. By the collusion of the debtors they were enabled in due course of judicial proceedings to obtain judgments and levy executions before the institution of proceedings in involuntary bankruptcy by the other creditors. *Held*, that the knowledge of the attorneys, though unknown to their principals they had peculiar facilities for obtaining information, so long as it was obtained about their employment was the knowledge of the bank, since disclosure would involve no breach of professional confidence; and that the judgments and levies were void as against an assignee in bankruptcy.

*G. W. Adams*, for plaintiff.

*Levi H. Brown*, for defendant.

BLATCHFORD, C. J. The district judge, in his decision in this case, says that "this is evidently a case where the bankrupts, in contemplation of insolvency, desired to secure their indorsers and the defendant, and, through the advice of their attorneys, concluded to do it by means of judgments and executions," and that "the attorneys employed to bring actions and obtain judgments were the bankrupts' attorneys." The mere existence of a desire on the part of a debtor, however strong such desire, that a particular creditor may succeed by suit, judgment, execution, and levy in obtaining a preference over other creditors, so that such preference may be maintained, even as against proceedings in bankruptcy which may be subsequently commenced, is not sufficient to establish that the debtor procured or suffered his property to be taken on legal process, with intent to prefer such creditor, if the proceedings of the creditor were the usual proceedings in a suit, unaided by any act of the debtor either by facilitating the proceedings as to time or method, or by obstructing other creditors who otherwise would obtain priority. This doctrine was firmly established by *Wilson v. City Bank*, 17 Wall. 473, and other cases which succeeded it. The absence of the inhib-