

BLAIR, Trustee, v. St. Louis, H. & K. R. Co. and others. (GREENE, Intervenor.¹)

(Circuit Court, E. D. Missouri. March 19, 1885.)

MORTGAGES—SURRENDER OF BONDS UNDER SCALING ARRANGEMENT—LIEN FOR PORTION OF REDUCED INDEBTEDNESS, FOR WHICH NEW BONDS WERE NOT ISSUED.

The indebtedness of a railroad was scaled down,—old mortgage bonds were surrendered, and new issued. A creditor surrendered his bonds, and received new ones for all, except a small portion, of the reduced indebtedness to him. No bond was issued for it, because no bond was issued for so small a sum. *Held*, that said creditor is entitled to a lien, equal to that of other mortgage creditors, for the whole amount due him.

Exceptions to Master's Report.

Theo. G. Case, for complainant.

John O'Grady, for receiver.

Fogg & Hatch and James Carr, for intervenor.

BREWER, J., (orally.) In the case of *Greene* against *The Railroad* this state of facts is presented: It appears that this gentleman held at one time, I think, \$20,000 of bonds. (I may not have the figures correctly.) The indebtedness was scaled down, and new bonds were issued. He surrendered his old bonds, and received new bonds for a portion of that amount; but there was a fraction over, \$500 or \$600, and no bonds apparently issuing for that limited sum, he holds that claim unadjusted, or rather unsecured by a bond. The master has allowed this as a claim against the company, but holds that it is inferior to the mortgage,—this new mortgage that was created at the time the debt was scaled down. In that, we think he is mistaken; that as Mr. Greene held the amount of the original indebtedness—\$20,000—as a prior and secured debt, and surrendered it for the mere purpose of having the indebtedness scaled down, he is entitled for all of the reduced obligation to come in with the present bondholders on the same standing; that although he has an amount here of \$500,—not enough to make a full bond,—yet his debt in equity stands on the same footing as that of those who have received bonds. So in that respect the exception will be sustained, and the debt will be held to be of equal lien with the mortgage debt, and paid out of the proceeds of the sale, the same as the other mortgage obligations.

¹ Reported by Benj. F. Rex, Esq., of the St. Louis bar.

KELLOGG and others v. Root and others.

(Circuit Court, W. D. Michigan, S. D. March 30, 1885.)

1. ASSIGNMENT FOR BENEFIT OF CREDITORS—HOW. ST. MICH. §§ 8739, 8744—FRAUDULENT PREFERENCES.

A creditor in Michigan may take security by mortgage, or otherwise, from an insolvent debtor, with knowledge of his financial weakness, so long as the creditor has no notice or knowledge that the debtor contemplates making an assignment, but the security must be given at the instance of the creditor, be duly delivered, and he must have no notice or knowledge of any fraudulent purpose, within the meaning of the statute.

2. SAME—CHATTEL MORTGAGES HELD VOID.

When an insolvent, at his own instance and convenience, voluntarily gives some of his creditors security, it is at once a suspicious circumstance, and it followed within a short time by an assignment, the conclusion will be justified, in the absence of other controlling circumstances, that both were contemplated, and should be deemed in law one transaction; and such securities will be held void. Chattel mortgages *held* void.

In Equity.

Smith, Nims, Hoyt & Erwin, for complainants.

Norris & Uhl, for defendants, Root & Co.

Mitchell, Bell & McGarry, for defendants, Stone & Porter.

WITHEY, J. Kellogg & Co., the complainants, are creditors of Ellen H. Stone, who, on the tenth of March, 1884, signed two chattel mortgages covering her entire stock of goods, in Portland, Ionia county: one to her father-in-law, Darius Stone, of that place, for \$6,176.90; the other to the defendants, Root & Co., of Detroit, for \$4,778.83, aggregating about \$11,000. Her husband, Allen Stone, was her man of business, who, as her agent, managed the store and conducted her affairs. He had the mortgages prepared, took them to Mrs. Stone to be executed, and when she had signed them, they were handed back to him, one to be filed in the town clerk's office, the other to be handed to Darius Stone. Neither of the mortgagees were present, or knew that the mortgages had been prepared or signed until a subsequent day. Allen Stone had them in his possession until March 17th, at about 5 o'clock p. m., when he lodged them in the proper office to be filed. In the mean time he had caused to be prepared a common-law assignment for the benefit of Mrs. Stone's creditors; had conferred with the defendant Porter, and procured his assent to act as the assignee. From the clerk's office, after filing the mortgages, Allen Stone proceeded directly to the store, and within two hours the assignment was executed and delivered to Porter, together with the assigned property.

The bill of complaint sets up the facts in the case, and prays that the mortgages be declared void; that the assignee be enjoined from paying them; that a receiver be appointed to take charge of the assigned property, and enforce the trust. There is also a prayer for general relief. On the motion for an injunction and for the appoint-