

CASES
ARGUED AND DETERMINED
IN THE
United States Circuit and District Courts.

SYLVESTER and others v. DANZIGER.¹

(Circuit Court, E. D. Louisiana. June 6, 1887.)

INSOLVENCY—DISCHARGE—FOREIGN CREDITOR.

Defendant made a *cessio bonorum* in the insolvent court of Louisiana. Plaintiffs, citizens of New York, brought a suit against the syndic of the insolvent estate in the state court having jurisdiction thereof, to enforce a vendor's lien upon some goods sold by them to him; and, *secondly*, plaintiffs went into the insolvency court, and took a rule to have certain goods delivered to them, which they alleged were their property, and not included in the cession. *Held*, that the plaintiffs could not be held to have impliedly assented to the defendant's discharge.²

On Exceptions.

Harry H. Hall, for plaintiffs.

Joseph P. Hornor and *Francis B. Lee*, for defendant.

BILLINGS, J. The question submitted is whether, upon the facts stated in the plea, the plaintiffs have participated in the insolvency proceedings of the defendant, so as to conclude them by his discharge.

The defendant had made a *cessio bonorum* in the insolvent court of the state, and has since been discharged. What the plaintiffs are alleged to have done is—*First*, to bring a suit against the syndic of the estate to enforce a vendor's lien upon some goods sold by them to him; and, *secondly*, to go into the insolvency court, and take a rule to have certain goods delivered to them, which they alleged were their property, and not included in the cession.

In the case of *Hyde v. Stone*, 20 How. 170, it was held that bringing in the state court a suit which was under the laws of Louisiana trans-

¹ Reported by Joseph P. Hornor, Esq., of the New Orleans bar.

² A discharge under the insolvency laws of Massachusetts does not bar the right of recovery of a non-resident creditor, unless he was a resident of the state at the time of the proceedings, or voluntarily submitted to its jurisdiction and assented to the discharge. *Norris v. Atkinson*, (N. H.) 5 Atl. Rep. 710, and note.

ferred to the insolvency court, in which defendant's insolvency proceedings were then pending, and cumulating that suit with those proceedings, was not a participation in the insolvency proceedings in such a manner as constituted an assent. Prof. Parsons (2 Pars. Cont. 536) states the test to be "whether the creditor has assented to the relief or discharge of the debtor expressly, or by some equivalent act, as becoming a party to the process against him under the law, taking a dividend and the like."

In this case the question is, "Did the creditor do anything, or derive any advantage, under or by virtue of the insolvent proceeding?" I think he did not. He followed up his rights precisely as he could have done without any insolvent law. He proved no claim. He received no dividend. His condition was in no respect changed from what it would have been if there had been no insolvent proceedings. He cannot be held to have impliedly assented to defendant's discharge.

Let the exception be overruled.

SLYFIELD v. HEALY.

(Circuit Court, N. D. Iowa, C. D. January Term, 1886.)

1. TAX SALE—PERIOD FOR REDEMPTION—NOTICE OF EXPIRATION—AFFIDAVIT OF SERVICE—LIMITATION.

Before the issuance of a county treasurer's deed of lands sold for taxes an affidavit that notice had been given to the owner of the expiration of the period for redemption was filed, which was defective in that the seal of the notary was not attached to the jurat. *Held*, that the defect was capable of being remedied, and that the lapse of five years would operate as a bar to question the validity of the deed, under Code Iowa, § 902, providing that "action for the recovery of real property sold for non-payment of taxes must be brought within five years from the execution of the treasurer's deed."

2. SAME—ACTION FOR REDEMPTION—LIMITATION.

Code Iowa, § 902, providing that an action for the recovery of real estate sold for non-payment of taxes must be brought within five years from the execution of the treasurer's deed, cannot be set up as a defense to an action for redemption from a tax sale, where notice of the expiration of the period of redemption has not been given to the actual owner of the land as required by Code, § 894.

In Equity. Bill to redeem certain realty from tax sale, and to quiet title.

A. F. Call and *Geo. E. Clarke*, for complainant.

Wright & Farrell, for defendant.

SHIRAS, J. Complainant seeks in this cause a decree to the effect that he is entitled to redeem two pieces of realty from tax sales, and prays that the tax deeds executed by the treasurer of Palo Alto county be set aside, and complainant's title be quieted thereto. The case is submitted on a stipulation setting forth the facts, from which it appears that complainant is the owner of the fee title to the S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of section 11, town-