

## Opinion of the Court.

## HARWOOD &amp; Another v. DIECKERHOFF &amp; Another.

ORIGINAL MOTION IN A CAUSE PENDING IN THIS COURT.

Argued March 2, 1886.—Decided March 8, 1886.

*Jerome v. McCarter*, 21 Wall. 17, affirmed and applied to this case. On the authority of that case the court declines to increase the amount of the bond given on appeal in this case, or to require additional securities.

This was a motion, founded upon accompanying affidavits, "to increase the amount of the bond to be given on appeal, and to require additional securities, or in default thereof, that the appeal taken by the above-named appellants to review the decree of the United States Circuit Court for the Fifth Circuit and Northern District of Florida, rendered at the December Term, 1884, that is to say, the 9th day of May, 1885, be dismissed, upon the ground that by reason of the death of N. B. Harwood, one of the appellants, since the date of said decree, the property therein decreed to be sold for the satisfaction of the sums found due to the complainants, has greatly depreciated and is constantly depreciating, and for the want of the care and attention which it had in the lifetime of the said N. B. Harwood, and would now have, but for his death, the security is altogether inadequate; and for such further or other relief or order as may be proper in the premises."

*Mr. C. J. Babbitt* and *Mr. W. E. Earle* for the motion. *Mr. John J. Walker* was with them on the brief.

*Mr. Henry Jackson* opposing. *Mr. L. I. Fleming* was with him on the brief.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This motion is denied on the authority of *Jerome v. McCarter*, 21 Wall. 17. "The circumstances of the case, or of the parties," have not been so changed by the death of N. B. Harwood, one of the appellants, as to make "the security, which,

## Statement of Facts.

at the time it was taken, was 'good and sufficient,' " now insufficient. No personal decree is asked. The sole purpose of the suit is to subject the lands in question to the payment of debts of Harwood, the deceased appellant. The affidavits do not satisfy us that the property is depreciating in value by reason of any neglect of the surviving appellants in its care or management.

*Motion denied.*

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TUA v. CARRIERE & Others.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

Submitted January 4, 1886.—Decided March 1, 1886.

In Louisiana, on the death of one of several members of a firm, the survivors may surrender their own undivided interests in the assets of the firm for the benefit of the creditors of the firm, but cannot surrender the interest of the deceased partner for that purpose; but, when such surviving members make such a surrender, purporting to include both their own interests therein and the interest of the deceased partner, and it is accepted by the court and acted upon in the manner provided by the law of the State, the action of the court therein is a judicial act, which cannot be attacked collaterally by an attaching creditor of the firm, interested in setting aside the proceedings for the purpose of retaining the lien of his attachment.

The insolvent laws of Louisiana were in force before and when the uniform Bankrupt Act of 1867 was enacted by Congress, and revived when that act was repealed.

A State insolvent statute, passed at a time when an act of Congress establishing a uniform system of bankruptcy is in force, is inoperative, so far as in conflict with that act, while the act is in force; but on its repeal, the State statute becomes operative.

The plaintiff in error brought this suit on August 18, 1884, on certain bills of exchange drawn by the firm of A. Carriere & Sons, on which he alleged there was due him the sum of \$12,437. His petition stated that A. Carriere & Sons was a commercial firm lately doing business in New Orleans, composed of Antoine Carriere, Emile L. Carriere, and Charles J. Carriere; that Antoine Carriere had departed this life on June