BACON *v.* INTERNATIONAL BANK OF CHICAGO.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 237. October Term, 1880. — Decided March 21, 1881.

The rights of an assignee in bankruptcy over collateral lodged by the bankrupt with the bank more than two months prior to the bankruptcy, as security for indebtedness which then existed or might thereafter be created, are only such as the bankrupt had when the proceedings in bankruptcy were commenced.

THE case is stated in the opinion.

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

The facts of this case briefly stated are these:

In 1876, the firm of Brunswick Brothers, Stephani & Hart Company was engaged in the business of making and selling billiard tables at Chicago and St. Louis. In August or September of that year this firm agreed to sell the J. M. Brunswick & Balke Company the stock and branch of the business at St. Louis, for which the purchasing company was to give, when the stock was transferred, its notes of one thousand dollars each payable three months from date, and the balance of the invoice when taken was to be divided into monthly notes of one thousand dollars each, the first to fall due four months from date, and one each month thereafter until the whole price was paid. The three notes due three months after date were to be delivered the selling firm when the transfer of the stock was made, but the others were to be deposited with the International Bank of Chicago, with instructions that they be delivered one month before their maturity.

The invoice when taken amounted to twelve thousand dollars. The stock was transferred and notes executed according to the agreement, September 9, 1876. The three first to fall due were at once handed over to the selling firm and the others deposited in bank as agreed. The firm of Brunswick Brothers, Stephani & Hart Company was dissolved in September, 1876, and all its assets passed on the dissolution to the firm of Brunswick, Stephani & Hart, which was its successor in the business.

On the 16th of September the new firm agreed that the bank might hold the nine notes then in its possession as collateral security for the indebtedness of the firm to the bank, which then existed or which might thereafter be created. The firm was at the time

owing the full amount of the notes, a part, at least, of which was for a debt incurred under a promise to give the notes as collateral when they were obtained.

Proceedings in bankruptcy were instituted against Brunswick, Stephani & Hart, on the 29th of November, 1876, and they were adjudicated bankrupts on the 16th of the following December. On the 3d of February, 1877, the other members of the firm of the Brunswick Brothers, Stephani & Hart Company filed their petition in bankruptcy, and on the same day they were adjudicated bankrupts and made parties to the former proceeding.

The J. M. Brunswick & Balke Company paid the notes to the bank as they fell due, and the payments as made were applied to the liquidation of the debt for which they were held as collateral. On the 25th of June, 1877, the assignee in bankruptcy of the bankrupt firms commenced this suit in trover against the bank to recover damages for the unlawful conversion of the notes and the moneys collected thereon.

This statement, which is not disputed, shows clearly, as we think, that the court below committed no error in directing a verdict in favor of the bank. The makers of the notes do not complain of what was done between the bank and the payees. They owed the debt represented by the notes and have paid it to the bank as it fell due. As the payments were made they got up their notes. The rights of the assignee against the bank are only such as the bankrupts themselves had when the proceedings in bankruptcy were commenced. That the St. Louis firm owed the debt to the Chicago firm, whether the notes were ever delivered by the bank or not under the terms of the deposit, is conceded. That debt was assigned to the bank as collateral. Such is the legal effect of the agreement between the bank and the firm. That gave the bank the right to collect the notes as they fell due, and apply the proceeds to the discharge of the debt to secure which the transfer was made. This was done more than two months before the proceedings in bankruptcy were begun, and there is no allegation or suspicion of bad faith. This made the title of the bank good as against the creditors of the bankrupts. Certainly the bankrupts cannot call on the bank to return the notes until the debt for which the security was given is paid. No more can the assignee.

The judgment is *Affirmed.*

Mr. J. W. Jackson and *Mr. Thomas Dent* for plaintiff in error.

Mr. A. M. Pence for defendant in error.