Aetna Indemnity Co., 10 Cal. App. 723, 727–729; 103 Pac. 365.

In *Porter* v. *Davidson,* 62 Fed. 626, 629, a similar conclusion was reached under a North Carolina statute. That court, after stating the rule laid down in *Freeman* v. *Howe, supra, Covell* v. *Heyman, supra,* and other cases, held that these decisions went only to the possession of the *res,* and that the remedy might be pursued against the sheriff for damages in any court. "The proceedings of the plaintiff in this case by which he took from the possession of the sheriff the chattels levied on was ancillary, not in any way affecting the merits of the original case. That can go on without conflicting with any of the cases quoted above."

The court of appeals did not consider the question whether petitioner had made out a case of actual possession in Oregon. Nor can we say from the very general words of the judge in granting respondent's motion and in discharging the jury that this precise question of fact was passed upon by the trial court. We, therefore, do not consider it, but leave it to be disposed of in the further proceedings which must be had in the district court.

Judgments reversed and cause remanded to the district court for further proceedings in conformity with this opinion.

Reversed.

FIDELITY & DEPOSIT CO. OF MARYLAND *v.* ARENZ.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 1. Argued October 10, 1933.—Decided November 6, 1933.

1. By means of materially false written statements in respect to his financial condition, a contractor induced a surety company to execute a surety bond conditioned on his performance of a state

highway contract. Upon default by the contractor, the surety became obligated upon a judgment obtained against them jointly by one who had furnished labor and materials entering into the work. The surety paid and took an assignment of the judgment. The contractor subsequently was adjudged bankrupt, and upon his application for discharge from his debts, including that due the surety, the latter filed objections. *Held:*

(1) The obligation of the surety according to the terms of the bond to pay the contractor's debt was "property" within the meaning of § 14 of the Bankruptcy Act, as amended (11 U.S.C., § 32 (b) (3)) barring discharge where the bankrupt "obtained money or property on credit . . . by making . . . a materially false statement in writing respecting his financial condition." P. 69.

(2) The bankrupt obtained, and the surety gave, the bond and obligation "on credit" within the meaning of the section. P. 69.

(3) The application for discharge should have been denied. P. 70.

2. The word "property," when used without qualification, may reasonably be construed to include obligations, rights and other intangibles, as well as physical things. P. 68.

61 F. (2d) 607, reversed.

CERTIORARI, 288 U.S. 597, to review a judgment affirming an order of the District Court granting a discharge in bankruptcy.

Mr. John Lichty, with whom *Mr. Elton Watkins* was on the brief, for petitioner.

Mr. John C. Veatch submitted for respondent.

MR. JUSTICE BUTLER delivered the opinion of the Court.

In 1929 respondent, for the purpose of procuring a contract with Oregon for highway construction and in compliance with applicable statutes (§§ 49-701 and 67-1101, Oregon Code, 1930), gave to the State a bond on which petitioner was surety conditioned that he would pay for labor and material entering into the work. He failed, and one who had furnished him labor and material sued on the bond and obtained a judgment for $10,000 against principal and surety jointly. Petitioner paid and took an assignment of the judgment. In 1931 respondent, having been adjudged bankrupt, applied for discharge from his debts including that due petitioner on account of such payment. Petitioner filed objections showing that respondent induced it to become surety by means of materially false written statements in respect of his financial condition. Respondent demurred. The district court sustained the demurrer and entered a decree of discharge. The Circuit Court of Appeals affirmed, 61 F. (2d) 607, following decisions of district courts in that circuit. *In re Tanner,* 192 Fed. 572, and *In re Ford,* 14 F. (2d) 848.

The Bankruptcy Act, § 14 as amended, 11 U.S.C., § 32 (b) (3), requires denial of discharge if the bankrupt "obtained money or property on credit . . . by making . . . a materially false statement in writing respecting his financial condition." Petitioner's obligation was given in behalf of respondent and inured to his benefit. It was a means by which he procured the contract and was security for the payment of his indebtedness incurred for labor or material required to do the work. But respondent insists that the bond is not property and that his fraud in obtaining it is not within the condemnation of clause (3). "Property" is a word of very broad meaning, and when used without qualification, expressly made or plainly implied, it reasonably may be construed to include obligations, rights and other intangibles as well as physical things. *Delassus* v. *United States,* 9 Pet. 117, 133. *Pritchard* v. *Norton,* 106 U.S. 124, 132. *Bryan* v. *Kennett,* 113 U.S. 179, 192. *Pirie* v. *Chicago Title & Trust Co.,* 182 U.S. 438, 443. *Farmers Loan Co.* v. *Minnesota,* 280 U.S. 204. *In re Louisville Nat. Banking Co.,* 158 Fed. 403. *Samet* v. *Farmers' & Merchants' Nat. Bank,* 247 Fed. 669. *Royal Indemnity Co.* v. *Cooper,* 26 F. (2d) 585, 587. *Matter of Dunfee,* 219 N.Y. 188; 114 N.E. 52. *Dunlap* v. *Tol., A. A. & G. T. Ry.,* 50 Mich. 470, 474; 15 N.W. 555.

Cincinnati v. *Hafer,* 49 Oh. St. 60, 65; 30 N.E. 197. *Dillingham* v. *Insurance Co.,* 120 Tenn. 302, 315; 108 S.W. 1148. For the meaning rightly here to be given the word, regard is to be had to the statute and connection in which it is found. *Nashville, C. & St. L. Ry. Co.* v. *Tennessee,* 262 U.S. 318, 323. *Wells Fargo & Co.* v. *Jersey City,* 207 Fed. 871, 876. The Act, while making discharge of bankrupts the general rule, conditions the grant upon adherence by every applicant to the standards of honesty and fair dealing in business transactions that are required or reflected in § 32 (b) (1), (2), (3), (4), (6), (7). The fraud perpetrated by respondent is of the kind condemned. Giving effect to the rule that legislative intent controls, it is plain that "property" includes petitioner's obligation according to the terms of the bond to pay respondent's debts. *Matter of Dunfee, supra.* *Gaddy* v. *Witt* (Tex. Civ. App.) 142 S.W. 926. *Royal Indemnity Co.* v. *Cooper, supra.* In *Gleason* v. *Thaw,* 236 U.S. 558, this court held that the professional services of an attorney were not within § 17 (2), which excepts from the general discharge liabilities for property obtained by false pretenses. That was a close case. See 185 Fed. 345, 196 Fed. 359. The principle of construction there applied may not reasonably be extended to this one.

It remains to be considered whether the respondent obtained petitioner's obligation "on credit." Principal and surety must be held to have had in contemplation all liabilities that naturally might arise from such a contract. *Matter of Dunfee, supra.* Respondent was bound by agreement, implied by law if not expressly made, that he would make good to petitioner whatever the latter as such surety might be required to pay. Petitioner gave its obligation, not for the premium alone, but also in consideration of respondent's promise to reimburse it. Having regard to the results that at the beginning the parties were reasonably bound to anticipate, it is clear that respondent obtained, and peitioner gave, the bond and obligation on credit. See *Swarts* v. *Siegel*, 117 Fed. 13, 17. *Kobusch* v. *Hand*, 156 Fed. 660, 662. While clause (3) seems aimed particularly at false pretenses made by borrowers and purchasers to obtain money or goods on credit (*Firestone* v. *Harvey*, 174 Fed. 574, 577), it is not limited to such transactions. Respondent's application for discharge should have been denied.

Reversed.

UNITED STATES ET AL. *v.* LOUISIANA ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

No. 17. Argued October 13, 1933.—Decided November 6, 1933.

1. Section 13 (4) of the Interstate Commerce Act, which empowers the Commission to remove unjust discrimination by intrastate rates against interstate commerce by prescribing minimum intrastate rates, is to be taken as supplementing § 15a (2), and, so construed, empowers it to raise intrastate rates so that the intrastate traffic may produce its fair share of the revenue required to meet maintenance and operating costs and to yield a fair return on the value of property devoted to the transportation service, both interstate and intrastate. P. 75.
2. In the performance of its duty, under § 15a (2), of providing adequate revenue for groups of carriers, the Commission is not obliged to undertake the impossible task of finding in advance of the order raising rates, the reasonableness of each individual rate; it is enough if, with proper procedure and supported by evidence, it find that the increases to be allowed, when applied to members of a group, will generally not exceed reasonable maxima, reserving to all interested parties the right to secure modification of any particular rates which, when challenged, may be found to be unjust or unreasonable. P. 75.
3. This same principle applies when intrastate rates are raised, under § 13 (4), to the level of interstate rates increased under § 15a (2). P. 78.
4. Findings of the Commission, read with its reports, *held* sufficient as findings that, through failure to contribute such increased