

White v. Turk.

the bail in this case. This court have had frequent occasion to consider the act of 26th May 1824, which authorizes the district judge of Louisiana to make rules of practice ; but until such rules shall be adopted, it provides, that the modes of proceeding, in civil causes in the district court, shall be conformable to the laws directing the mode of practice in the district courts of the state. If the benefit of the insolvent law had been extended to Riker, before the bail were fixed, it might have become a question, whether they were not discharged, under the rule laid down by this court in the case *Beers v. Haughton*, 9 Pet. 329. But as the proceedings of Riker against his creditors were dismissed, on their objections, both in the district and supreme court, the bail can claim no exemption from the obligations of their bond, on account of these proceedings. A judgment has been obtained against Riker, which he has not satisfied, nor surrendered himself in discharge of his bail ; and they have taken no steps to discharge themselves, *either by paying the judgment or surrendering their principal. [*237 The judgment against the bail must, therefore, be affirmed, with costs.

THIS cause came on to be heard, on the transcript of the record from the district court of the United States for the eastern district of Louisiana, and was argued by counsel : On consideration whereof, it is now here adjudged and ordered by this court, that the judgment of the said district court in this cause be and the same is hereby affirmed, with costs and damages, at the rate of six per cent. per annum.

*JAMES WHITE, Plaintiff, v. HIRAM TURK, JAMES VAUGHAN and [*238
WILLIAM GRANT.

Certificate of division

The intention of congress, in passing the act, authorizing a division of opinion of the judges of the circuit courts of the United States to be certified to the supreme court, was, that a division of the judges of the circuit court, upon a single and material point, in the progress of the cause, should be certified to the supreme court for its opinion, and not the whole cause. When a certificate of division brings up the whole cause, it would be, if the court should decide it, in effect, the exercise of original, rather than appellate jurisdiction. *United States v. Bailey*, 9 Pet. 367, cited and approved.

CERTIFICATE of Division from the Circuit Court of East Tennessee.

Coxe, for the plaintiff. No counsel appeared for the defendants. The case is fully stated in the opinion of the court.

MCKINLEY, Justice, delivered the opinion of the court.—This is a case certified to this court from the circuit court of the United States for the eastern district of Tennessee. A petition was filed by the defendants, Vaughan and Grant, stating that a judgment had been rendered in that court, in favor of the plaintiff, against the said Turk, at the October term 1834, for the sum of \$893.67 ; that said Turk had been arrested upon a *ca. sa.*, issued upon said judgment, and that the other two defendants had become his sureties in a bond, with condition that he should make his personal appearance at the court-house in Knoxville, on the second Monday of October next thereafter ; then and there to pay a debt recovered by James

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White, in said suit against said Turk, for \$866.21 $\frac{1}{2}$, take the oath of insolvency, or make a surrender of his property, as prescribed by the laws of the state; otherwise, the bond to remain in full force and virtue; that this bond, together with the *ca. sa.*, had been returned to said court, at its October term 1835, and judgment rendered thereon *against all the *239] defendants, upon a motion, and without notice to them of the motion. For reasons stated in the petition, they prayed for and obtained a *superseas*.

At the October term 1836, of said court, "on a motion being made to set aside the judgment, for the reasons assigned in the petition; and on the ground, that the statutes of the state of Tennessee, referred to in the petition, and under which the bond was taken, and the judgment on it rendered, are a part of the insolvent laws of the state, and cannot apply to proceedings on an execution issued from the federal court; and on a full consideration of the subject, the opinions of the judges were opposed on the following points.

"1st. Whether the omission to name in the bond the sum called for in the execution, and the naming of a different sum, does not vitiate it? 2d. Whether the omission to state in the bond the court before which the defendant is to appear, take the oath of insolvency, or surrender his property, does not vitiate it? 3d. Whether the omission to set out in the bond, the writ of execution, or refer to it, does not vitiate it? 4th. Whether the proceedings authorized by the statutes of the state of Tennessee, passed in 1824, ch. 17, and in 1825, ch. 57, can apply to the federal courts? 5th. Whether, on account of the above defects, the bond is not void, and the proceedings on it, under the above statutes, consequently, a nullity?"

The intention of congress, in passing the act under which this proceeding has taken place, was, that a division of the judges of the circuit court, upon a single and material point, in the progress of the cause, should be certified to this court, for its opinion; and not the whole cause. The certificate of the judges, in this case, leaves no doubt that the whole cause was submitted to the circuit court, by the motion to set aside the judgment on the bond. And had the court agreed in opinion, and rendered a judgment upon the points submitted, it would have been conclusive of the whole matter in controversy between the parties. This certificate, therefore, brings the whole cause before this court; and if we were to decide the questions presented, it would, in effect, be the exercise of original, rather than appellate, jurisdiction. *United States v. Bailey*, 9 Pet. 267; *Adams v. Jones*, decided at the present term of this court (*ante*, p. 207).

*For these reasons, the cause is remanded to the circuit court, *240] this court not having jurisdiction of the questions, as stated.

BALDWIN, Justice, dissented.

THIS cause came on to be heard, on the transcript of the record from the circuit court of the United States for the district of East Tennessee, and was argued by counsel: On consideration whereof, it is the opinion of this court, that the whole case has been certified to this court; and as it has been repeatedly decided by this court, that the whole case cannot be adjourned on a division of the judges, the court cannot decide this case in its present form. Whereupon, it is now here ordered and adjudged by this

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court, that this cause be and the same is hereby remanded to the said circuit court, for further proceedings to be had therein, according to law and justice; this court not having jurisdiction over the case, as stated.

*JOHN J. JENKINS and others, Appellants, v. SARAH M. PYE and EDWARD ARELL PYE, infants, by JAMES B. PYE, their father and next friend, Appellees. [*241]

Constructive fraud.—Laches.

The complainants in their bill alleged, that a conveyance of her real estate was made by a daughter, to her father, for a nominal consideration; the answer denied the matter stated in the bill; and the defendants gave evidence of the transfer of stock, to the value of \$2000, on the day the conveyance was made, claiming that this was also the consideration in the deed: *Held*, that this evidence was admissible, without an amendment of the answer; it rebutted the allegation in the bill, that the deed was made wholly without consideration.

The complainants, as the ground to invalidate a deed, made by a daughter, of twenty-three years of age, to her father, by which she conveyed the estate of her deceased mother, to her father (he having a life-estate, as tenant by curtesy in the same), asserted, that such a deed ought, upon considerations of public policy, growing out of the relations of the parties, be deemed void. We do not deem it necessary to travel over all the English authorities which have been cited; we have looked into the leading cases, and cannot discover anything to warrant the broad and unqualified doctrine asserted; all the cases are accompanied with some ingredient showing undue influence exercised by the parent, operating on the fears or hopes of the child; and sufficient to show reasonable grounds to presume, that the act was not perfectly free and voluntary, on the part of the child; and in some cases, although there may be circumstances tending, in some small degree, to show undue influence, yet if the agreement appears reasonable, it has been considered enough to outweigh slight circumstances, so as not to affect the validity of the deed. It becomes less necessary for the court to go into a critical examination of the English chancery doctrine on this subject; for, should the cases be found to countenance it, we should not be disposed to adopt or sanction the broad principle, that the deed of a child to a parent, is to be deemed, *primâ facie*, void.

To consider a parent disqualified to take a voluntary deed from his child, without consideration on account of their relationship, is opening a principle at war with all filial, as well as parental, duty and affection; and acting on the presumption that a parent, instead of wishing to promote the interest and welfare, would be seeking to overreach and to defraud his child. Whereas, the presumption ought to be, in the absence of all proof tending to a contrary conclusion, that the advancement of the interest of the child was the object in view; and to presume the existence of circumstances conducing to that result; such a presumption harmonizes with the moral obligations of a parent to provide for his child; and is founded upon the same benign principle that governs cases of purchases made by parents, in the name of a child; the natural and reasonable presumption in all transactions of this kind is, that a benefit was intended the child, because in the discharge of moral and parental duty.¹

In the year 1813, a daughter, twenty-three years old, conveyed all her remainder in the real estate which had belonged to her mother, to her father, for a nominal consideration; she married two years afterwards, and died in 1818; no complaint of the transaction was made, in the lifetime of the daughter, nor during the lifetime of the father, who died in 1831. Lapse of time, and the death of the parties to a deed, have always been considered, in a court of chancery, entitled to great weight; and almost controlling circumstances, in cases of this kind.²

Pye v. Jenkins, 4 Cr. C. C. 541. reversed.

¹ The transfer of a contingent interest from a child to a parent, is not viewed as a sale, but rather as a family arrangement, the validity of which does not depend on the adequacy of the price. Such conveyance is *primâ facie*

valid; it is incumbent as the party attacking it to show undue influence. *Sullivan v. Sullivan*, 21 Law Rep. 531. See *Taylor v. Taylor*, 8 How. 183.

² See *Godden v. Kimmell*, 99 U. S. 211.