
 Bodley et al. v. Goodrich.

It seems to be clear of doubt. The judgment of the State court is reversed.

ORDER.

This cause came on to be heard on the transcript of the record of the Supreme Court of Judicature of the State of Vermont, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said Supreme Court of Vermont in this cause be and the same is hereby reversed, with costs, and that this cause be and the same is hereby remanded to the said Supreme Court of Vermont, for further proceedings to be had therein in conformity to the opinion of this court.

WILLIAM S. BODLEY AND THOMAS E. ROBBINS, APPELLANTS, v. WILLIAM M. GOODRICH.

The Commercial and Railroad Bank of Vicksburg assigned all its property to trustees, reciting that "the embarrassed situation of the bank and the present inability of its debtors to meet their liabilities, and by consequence that the bank was unable to pay its debts promptly, rendered it proper that a general assignment should be made for the benefit of its creditors and completion of the railroad"; it therefore assigned all its property, real, personal, and mixed, to trustees, with authority to sell the effects assigned, to collect all debts due to the institution, to complete the railroad, for which purpose they were authorized to borrow a sum not exceeding \$250,000, to allow claims against the bank of a certain description, and out of the proceeds collected first to pay the principal and interest of the above *loan; after the completion of the said road, dividends were to be [*277 made *pro rata* amongst the creditors of the bank who had filed their claims, should there not be a sufficient amount to pay all the claims; the trustees to receive eight thousand dollars each per annum for their services.

This deed was fraudulent and void as to all creditors of the bank who did not become parties to it by filing their claims.¹

THIS was an appeal from the Circuit Court of the United States for the District of Louisiana.

The facts of the case are sufficiently set forth in the opinion of the court.

It was argued by *Mr. Samuel C. Reid, jr.*, and *Messrs. Stockton and Steele*, in a printed argument, for the defendant in error, no counsel appearing for the appellants.

¹ REVIEWED. *Chafee v. Fourth Nat. Bank of New York*, 71 Me., 527.

Bodley et al. v. Goodrich.

Mr. Justice McLEAN delivered the opinion of the court.

This is an appeal from the decree of the Circuit Court of the United States for the District of Louisiana.

The complainants represent that they and William Frazer are the legal owners of a tract of land in East Ouachita land district, containing four thousand one hundred and twenty-six acres, as the assignees of the president, directors, and company of the Commercial and Railroad Bank of Vicksburg, a banking and railroad institution, duly incorporated, in the State of Mississippi. And they charge the defendant with setting up a claim to the land by a purchase made by him at sheriff's sale. And they pray that the defendant may be decreed to release to them his title.

The defendant denies, in his answer, that the complainants have either the equitable or legal title to the above land by virtue of the above assignment, on the ground, among others, that the president and directors of the bank and railroad company had no power to assign the property of the bank, and thereby change the trust committed to them. And the defendant alleges that he purchased the land for a valuable consideration, *bonâ fide*, at sheriff's sale, and that the proceedings of such sale were regular and according to law.

The deed of assignment, under which the complainants claim, is dated February 13th, 1840. As a reason for the assignment, the deed states "the embarrassed situation of the president, directors, and company of the Commercial and Railroad Bank, and the present inability of its debtors to meet their liabilities, and by consequence that the bank was unable to pay its debts promptly"; and they come to the conclusion, "that an assignment of the property, debts, and effects of the said corporation should at once be made for the benefit of its creditors, as will most effectually promote the interest of the creditors of the institution, and protect its *278] debtors from loss *and sacrifice; and at the same time furnish means to finish and complete the railroad immediately, and to protect and secure to the stockholders of the road the franchise granted by the charter."

And the president, directors, and company of the bank, in consideration of the premises, &c., "granted, bargained, sold, assigned, and transferred, and set over, &c., to William Frazer, Thomas E. Robbins, and William S. Bodley, and to the survivor of them, and to their heirs, executors, administrators, and assigns, &c., all the property, real, personal and mixed, which, either in law or equity, belongs to the bank and its branches, wherever such property shall be found."

And the assignees were authorized to sell the effects as-

signed, to collect all debts due the institution, to complete the railroad, for which purpose they were authorized to borrow a sum not exceeding two hundred and fifty thousand dollars, to allow claims against the bank of a certain description, &c., and out of the proceeds collected first to pay the principal and interest of the above loan. After the completion of the railroad, dividends were to be made *pro rata* among the creditors of the bank who had filed their claims, should there not be a sufficient amount to pay all the claims. The trustees were to receive "out of the proceeds, as a full compensation for their labor, trouble, and responsibility in the premises, at the rate of eight thousand dollars each per annum."

It appears from the deed of assignment, that the creditors of the bank were designed to be parties to it on filing their claims, &c. But the creditor who obtained the judgment on which the property was sold never became a party to the deed. The loan authorized was effected, but no dividend has ever been made among the creditors.

Upon its face this deed shows an intention by the bank to postpone its creditors, use the effects of the bank for the completion of the railroad, pay the trustees enormous salaries, and make no dividend among the creditors of the bank until these objects were accomplished. This was proposed to be done with the consent of creditors, and if that consent had been given, there could be no objection to the arrangement. The motive avowed, to complete the railroad, the greater part of which had been made, and by which an income would be secured for the benefit of the creditors and stockholders of the bank, would have been legal, and perhaps wise, had the creditors consented. But the plaintiff in the judgment under which the property claimed by the plaintiffs was sold did not consent; consequently he was not bound by the deed of assignment. It was fraudulent as against him and all other creditors of the bank who did not become parties to the deed.

*This view is so clearly sustained on general principles, that it is unnecessary to consider the other questions raised in the case. The Supreme Court of Mississippi in the case of *Arthur v. The Bank*, 9 Sm. & M. (Miss.), 394, held this deed to be fraudulent against creditors; and also the Supreme Court of Louisiana, in *Fellows v. The Commercial and Railroad Bank of Vicksburg*, 6 Rob. (La.), 246. The judgment of the Circuit Court is affirmed, with costs.

Crawford et al. v. The Branch Bank of Mobile.

ORDER.

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 Louisiana, and was argued by counsel. On consideration whereof, it is now here ordered and decreed by this court, that the decree of the said Circuit Court in this cause be and the same is hereby affirmed, with costs.

WILLIAM CRAWFORD AND DAVID FILES, PLAINTIFFS IN
ERROR, v. THE BRANCH BANK OF ALABAMA AT MOBILE.

A statute of the State of Alabama, directing that promissory notes given to the cashier of a bank may be sued and collected in the name of the bank, is a law which affects the remedy only, and, although passed after the note was executed, does not impair the obligation of the contract.

Besides, the record does not show that the question of the consistency of the statute with the Constitution of the United States was raised in the State court; and therefore a writ of error issued under the twenty-fifth section of the Judiciary Act must be dismissed on motion.¹

THIS was a writ of error sued out under the twenty-fifth section of the Judiciary Act, and directed to the Supreme Court of Alabama.

In May, 1841, the following promissory note was executed:—

“\$3,817.50.

“Two hundred and fifteen days after date, we jointly and severally promise to pay to B. Gayle, cashier, or order, three thousand eight hundred and seventeen $\frac{50}{100}$ dollars, negotiable and payable at the Branch of the Bank of the State of Alabama, at Mobile, for value received, this 31st day of May, 1841.

“WILLIAM CRAWFORD,
DAVID FILES,
R. G. GORDON.”

On the 4th of December, 1841, the legislature passed an act, from which the following is an extract:—“All notes, bills, *bonds, or other evidences of debt, held by the
*280] State Bank or branch banks, payable to the cashier or

¹ See note to *Commercial Bank v. Buckingham*, 5 How., 317.