
Colby v. Ledden.

ORDER.

This cause came on to be heard on the transcript of the record of the Superior Court of Judicature of the State of New Hampshire, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said Superior Court of Judicature be and the same is hereby affirmed, with costs and damages at the rate of six per centum per annum.

ABRAHAM COLBY, PLAINTIFF IN ERROR, v. JAMES LEDDEN.

The decision of this court in the preceding case of *Peck v. Jenness* affirmed.

THIS, like the preceding case of *Peck v. Jenness*, was brought up from the Superior Court of Judicature of the State of New Hampshire, by a writ of error issued under the twenty-fifth section of the Judiciary Act.

Ledden was an inhabitant of the Province of New Brunswick, and Colby of the State of New Hampshire. The attachment was issued in 1837.

The case was similar, in its principal circumstances, to that of *Peck v. Jenness*, and was argued together with it.

C. B. Goodrich, for the defendant in error.

As to the principal question, I rely upon the argument *submitted in the case of *Peck v. Jenness*. The at- [*627
tachment in this case was made before the passage of
the bankrupt statute. It cannot with much reason be said,
that the right which the defendant below acquired by his
attachment, legal when made, can be taken from him by sub-
sequent legislation. Every objection, however, can be made
in this case, which can be taken in relation to any attach-
ment. The debt is discharged here, to the same extent as
any other debt.

As to the objections, that the statute requisites have not
been complied with which are essential to constitute an at-
tachment, I submit that the State court is the exclusive judge
in this particular, and that its judgment is not open to review
is this court.

Mr. Justice GRIER delivered the opinion of the court.

This case was argued with the case of *Philip Peck et al v.*
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 Shawhan et al. v. Wherritt.

John S. Jenness et al., and the record presents the same questions which have just been decided in that case. For the reasons there assigned, the judgment of the Superior Court of New Hampshire is affirmed.

ORDER.

This cause came on to be heard on the transcript of the record to the Superior Court of Judicature of the State of New Hampshire, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said Superior Court of Judicature in this cause be and the same is hereby affirmed, with costs and damages at the rate of six per centum per annum.

JOHN L. SHAWHAN, DANIEL SHAWHAN, GEORGE H. PER-
RIN, BENJAMIN BERRY, CATHARINE SNODGRASS, AND
ISAAC MILLER, APPELLANTS, *v.* PERRY WHERRITT, AS-
SIGNEE OF THE BANKRUPT ESTATE OF BENJAMIN BRAND-
DON.

A decree of the District Court of the United States, sitting in bankruptcy, whereby a person proceeded against, *in invitum*, was declared to be a bankrupt, is sufficient evidence, as against those who were not parties to the proceeding, to show that there was a debt due to the petitioning creditor; that the bankrupt was a merchant or trader within the meaning of the act; and that he had committed an act of bankruptcy.¹

The first section of the bankrupt act declares that the making of any fraudulent conveyance, assignment, sale, gift, or other transfer of lands, tenements, goods, or chattels, is the commission of an act of bankruptcy.

No creditor can, by instituting proceedings in a State court, after the commis-
*628] sion of *an act of bankruptcy by his debtor, obtain a valid lien upon the property conveyed by such fraudulent deed, if he has notice of the commission of an act of bankruptcy by the debtor. It passes to the assignee of the bankrupt for the benefit of all the creditors.²

A lien thus acquired is not saved by the proviso of the second section of the bankrupt law. That proviso does not protect liens which are inconsistent with the second and fifth sections of the act, and these sections declare such a lien to be void.

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

On the 6th of April, 1842, Benjamin Brandon executed the following deed:—

¹ APPLIED. *Boyd v. Olvey*, 82 Ind., 306. DISTINGUISHED. *In re Thomas*, 11 Bank. Reg., 333.

² CITED. *Buchanan v. Smith*, 16 Wall., 307; *Michaels v. Post*, 21 Id., 428.