COURT OF ERRORS AND APPEALS

OF NEW JERSEY.

Between

WILLIAM H. HARRISON,

Appellant,

and

JOSHUA S. COOLEY,

Respondent.

Brief of Counsel for Appellant.

GUILD & LUM,

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Albert F. Hall and Reuben M. Harrison, partners as Hall & Harrison, machinists, sold their personal property in use in their business to William H. Harrison.

By the arrangement made between the parties two bills of sale were made, one by Hall to his partner; the other by ~~the partners~~ Reuben to William.

Within a few days after the transaction was completed, Hall & Reuben confessed a judgment for the amount of a debt due from the late firm to Joshua S. Cooley, under which execution was issued and a levy made upon the property which had been conveyed to William.

Upon bill filed by Cooley in aid of execution, a decree was made adjudging the two bills of sale void as to Cooley's claim, and that he by virtue of his execution, had a lien thereon for the amount due upon his judgment, from which decree William appeals.

The learned Master who advised the decree, found in effect :

1. That the sale to William was not made in good faith.
2. That the consideration was inadequate.
3. That William had notice of Cooley's claim, or that the circumstances were such as to put him upon his guard, and amount to notice.

Our contention is that none of these findings is supported by the evidence, and that William is hereby made to suffer for possible inconsistencies on the part of Reuben.

It is admitted that the property conveyed included all the property of the partners and all debts due them, except their interest in a stock company formed for the purpose of manufacturing shoe heeling machines under a patent acquired upon a design originated by Hall & Harrison.

1. Was there any want of bona fides on the part of William?

William was a machinist then in the employ of Seymour & Whitlock. He swears that Hall first spoke to him about buying him out (p. 133, line 20) about the first of February (p. 133, l. 22-25); (the transaction was completed February 20th).

William replied that he would think it over. He did not think much of it at the time (p. 133, l. 25-31).

Hall desired to sell out at once because he had a situation in Washington that would pay him $150 a month, and he was very anxious to accept it (p. 133, l. 37-40; p. 134, l. 1-2).

William objected to buying out one and being in partnership with the other.

He says there must have been half a dozen meetings in the course of the transaction (p. 134, l. 1-18). At the first interview William asked their price, and Hall showed him an estimate of what he thought it was worth, which William says was "way up," (p. 134, l. 28-40.)

William was conversant with the property and had seen it all many times, (p. 135, l. 1-10.)

Hall valued it in the neighborhood of $2,500 in his first estimate, (p. 135, l. 8-12.)

William at first tried to ascertain their condition as to their standing, what they owed and how much was coming to them, what they were worth and what the property was worth; and the statements, exhibits Nos. 1 and 2, were accordingly prepared by Hall and submitted as statements No. 1 of the assets and No. 2 of the liabilities of the firm.

The liabilities footed up $1,112.16.

The assets, $2,971.12.

William on receiving these statements asked Hall if they embraced all the firm's liabilities (because he proposed to assume the liabilities), and was assured by said Hall that that statement (exhibit No. 2) contained all the liabilities of the firm (pp. 136-137.) Hall said the partners wanted twelve hundred dollars ($600 each).

William's testimony, p. 137, l. 17-20.

Hall's testimony, p. 30, l. 36-40; p. 46.

William flatly refused to listen to such a proposition as that he was to give the partners $1,200 and assume the liabilities shown on exhibit No. 2.

Hall swears, p. 49, l. 25-40.

A We asked $600 apiece that night he was down at the shop.

Q What did he say about it?

A He said he could not get so much money.

Q What else did he say?

A He said, "It is no use of my thinking of buying if you ask anything like that; I cannot do it. If I paid that much I should not have anything to pay off the indebtedness."

Q How long before the bill of sale?

A Then I believe he did say, "Now," says he, "if you divide that by four I will think about it, or," says he, "I will go out and have a cigar and you and Mat can talk about it."

Hall further says they could not come to any conclusion

that night, and wanted two or three days to think about the matter. This was a week before the sale, (p. 50, l. 1-15.)

William said $500 was all he could pay, or if the partners agreed to take that he would consider it. Hall's testimony, p. 50, l. 28-30.

This was upon the basis that William should assume the liabilities shown on exhibit No. 2.

Hall swears, p. 50, l. 29-40.

Q When did you make this statement (exhibit No. 2) out, with reference to the interview you have just sworn to with William H. Harrison ?

A Previous to the interview.

Q How long previous ?

A I think that same day.

Q The same day ?

A Yes, sir; I think the same day, and we had an interview that evening.

Q. Didn't you say you made out the statement at the request of William H. Harrison ?

A Yes, sir.

Hall gave to William these statements, made out in accordance with William's request, made in order that William might see if he could afford to buy the shop; and when William said he could not afford to pay the $1,200 and assume the liabilities shown on exhibit No. 2 and could not pay more than $300, it was after he had received these statements.

Hall's testimony, p.p. 52-53.

William objected to the valuations shown on the statement of assets as too high. He had personally examined the tools, and, in fact, did not regard the valuations of Hall.

He did think the whole property was worth about $1,400, after having examined it, (p. 141, l. 20-29.)

Now comes the essence of the transaction.

It was not thought of by Hall that William should pay Cooley's claim.

Hall himself swears that the Cooley claim was to be paid by Reuben and himself out of the $1,200 which they offered to take for the property, subject to the liabilities shown on exhibit No. 2, p. 53, l. 34-40.

Now Hall says that when they accepted the $300 they expected William to pay the Cooley claim, amounting to $900, which would make the consideration $1,200, which sum William had flatly refused to pay.

Is it to be supposed for a moment that William expected to assume the Cooley debt?

We submit that this is not within the bounds of reason.

Hall expected that Reuben and he would pay Cooley out of the $1,200 if William would pay that sum.

William refused to pay the $1,200; said he would not think about any such sum; said if they would take a *quarter* of that he would think about it, and, being very anxious to sell and get out of the business what he could. Hall came down to $300, or at least $150 *for his half.* Why, if Hall thought William was to pay Cooley in addition to the $300 and the liabilities shown on exhibit No. 2, did he not make this one of the most prominent features of the transaction, after the refusal of William to pay the $1,200.

Yet he does not even pretend that he mentioned the Cooley debt to William.

Was a bold and transparent fraud perpetrated in this transaction upon Hall, as suggested by the learned Master?

We submit that there is nothing whatever in the evidence of any of the witnesses, on either side, to question fraud upon William.

The learned Master attaches importance to the fact that two bills of sale were made instead of one; but we submit that William's good faith is not impeached by this.

Reuben was not so anxious to sell out as Hall. He owed William the amount of a note which he had given to William some years before, and he desired this paid.

William had saved this money from his pay as a soldier,

and had lent it to Reuben, taking his note. The statute of limitations would have barred a suit upon it, but the moral obligation was very strong, and he wanted it paid, and he saw an opportunity to get this note paid in this transaction.

He therefore made the arrangement on his part as it was consumated, that he would take a bill of sale from Hall for his interest, and then include the amount due upon the note in the consideration for the conveyance from him.

He accordingly desired William, who was to bear the expense of the transfer, to have the two bills of sale made.

Reuben's testimony, p. 120.

William's testimony, p. 138, l. 30-40 ; p. 140, l. 1-7.

There was no juggle about this. William was asked to have the transfer made in this way and he complied ; there was nothing to lead them to hesitate nor ask why, and it was a proper means.

The money was paid as agreed upon, (p. 97, l. 28-40 ; p. 98, l. 1-13 ; pp. 114, 115, 140.)

Reuben had no interest remaining in the business.

William positively swears to this, (p. 206) and Rueben swears to the same thing.

He entered the employ of William upon an agreement that he was to be paid two dollars and a half per day. This is uncontradicted.

The fact that there was an error in footing up the figures on exhibit No. 1, amounts to nothing, for William did not regard Hall's valuations of the assets, and it did not matter to him what they footed. He had examined the accounts and thought a great part of them uncollectable.

Hall had done much figuring upon the value of the firms assets long before the sale to William was thought of. At one time he had figured the assets as worth $4,800, which must have been based upon ridiculous valuations.

He was a great figurer, and he had made loose pencil figures upon the back of exhibit No. 2, but it does not appear that William ever knew what they were, or noticed them until the trial, and then he swore he did not know what the figures were, (p. 147.)

2 The consideration was not inadequate so as to make the sale void.

The machinery cost $2,000 in March, 1877, (p. 44, l. 21-28, pp. 88-89.) It was not then new; this machinery had been in use nearly three years after its purchase. In addition to this, property worth about $75, was sold, (p. 89, p. 90, l. 10.)

Reuben swears (p. 102) that all the property sold was worth not more than $1,750; that it was much worn; it must have been, in the nature of things, greatly reduced in value, being old machinery at the beginning and in continued use for the three years.

Reuben and Hall must have so considered it, for Reuben swears (p. 111) that he and Hall had talked over the firm matters through the Winter, and that they had talked it over between them, that they were $500 worse than nothing—this is not denied.

William was a machinist—was then engaged in the business. He was familiar with this particular machinery and had examined it. He valued it at $1,450, (p. 141, l. 20-29.)

He swears positively he paid all the place was worth (p. 143, l. 17-20.)

He further swears (p. 144, l. 1-3) that he would not have bought the property subject to the Cooley debt.

He swears further (p. 203, l. 30-40) that any one might take the property off his hands for what he paid for it.

The debt of Hall estate (chattel mtg. and rent) $730 00
Due bill, Hall 210 00
Cash paid to ~~each~~, $150, ~~300 00~~ 150
~~$1,240 00~~

In addition thereto, William assumed the payment of the debts shown on exhibit No. 2, in addition to the indebtedness to Hall estate, amounting to $416.30, but which were understood by William to amount to $398, and was to receive accounts receivable, amounting to $293.59, many of

which accounts William swears he did not consider good. This left, according to William's then calculation, $105 additional consideration—making in all $1,345. Even if William succeeded in collecting all the outstanding accounts, which was highly improbable. Any losses on these accounts would swell the amount of the consideration paid by William, and leave no room for reasonable doubt that it was considered by William full and adequate consideration for the property, and we submit was good and adequate from any standpoint.

The weight of evidence and reasonable presumption as to the condition of the machinery, shows this consideration to be good.

There was nothing in this to shock the conscience.

And, besides, the note of Reuben must not go for nothing.

The note was not as valuable as the face indicated.

Reuben might have pleaded the statue of limitations in bar to a suit upon it, but he considered it good and wanted it paid. William did not count it good for its face, yet he would not have surrendered it voluntarily. It was worth something, and went to make the consideration for the conveyance to William good.

It is analogous to the case of one who purchases partnership real estate, the title to which is held by one of the partners, where the purchaser has no notice, actual or constructive, of the trust.

The sale would be good.

3 *Kent's Com.* 39. No. 1, (12th Ed.)

The claim of the joint creditors is not such a lien upon the partnership property but that a bona fide alienation to a purchaser for a valuable consideration by the partners, or either of them, before judgment and execution will be held valid.

Upon a dissolution of the partnership, each partner has a lien upon the partnership assets, as well for his indemnity as for his proportion of the surplus. But creditors have no lien upon the partnership effects for their debts. Their

equity is the equity of the partners operating to the payment of the partnership debts.

3 Kent's Com. 65.

Partnership creditors have no equity to prevent partners from transfering their profits to each other, or changing its character from joint to separate property, provided it is done in good faith.

Richards *v.* Manoon, 101 Mass., 482, 487.
Allen *v.* Centre Valley Co., 21 Conn., 130.
Siegel *v.* Chidsey, 28 Penn. St., 279.
Richardson *v.* Tobey, 3 Allen, 81.
Robb *v.* Mudge, 14 Gray, 534.
Demon *v.* Harquard, 32 N. Y., 65.
Potts *v.* Blackwell, 4 Jones Esq., 58.
Marks *v.* Still, 15 Grant, 400.
Jones *v.* Lusk, 2 Mete (Ky.) 356.
Mandel *v.* Peay, 20 Ark., 325.
Waterman *v.* Hunt, 2 R. I., 298.
Wilson *v.* Bowden, 8 Rich., 9.

Accordingly, when by an agreement made bona fide, and for value the assets of the partnership are vested in one of the partners in consideration of his promising to pay the firm debts, the partnership creditors will not have any prior claim, or lien upon such assets, either apart from, or by reason of the promise.

Rankin *v.* Jones, 2 Jones, Eq. 169.
Hopgood *v.* Cornwell, 48 Ill., 64,
Robb *v.* Mudge, 14 Gray, 534.
Baker's Appeal, 21 Penn. St., 76.
3 Kent (12th Ed.) 65 N. 1.)

3. What was there to put William upon his guard against Cooley's debt?

He asked Hall at the commencement of the negotiations for a statement of the firm's affairs, and was furnished by Hall with a statement, showing no debt to Cooley, and was informed by Hall that this was a statement of all the indebtedness of the firm.

This alone would have been sufficient to put him off his guard and cause him to consider no further inquiry necessary.

Hall does not pretend that reference was made to Cooley's claims in any of the negotiations with William, although it was one of the most important and essential matters, if Hall is to be believed, and the Master's view is to be taken as correct.

Reuben swears that he never mentioned the Cooley debt to William, because it was understood between him and Hall that that claim was to be otherwise adjusted, and in this he is corroborated collaterally by the evidence of J. Grover Crowell, a creditor, (p. 77, l. 35-4; p. 78, and of David A. Hall, pp. 79-80-81.)

David A. Hall further swears that he communicated to William the information so received by him from Hall, and this, under circumstances well calculated to satisfy William that there was nothing for him to fear or to cause him to make further inquiry.

If Hall's statements to Crowell and David A. Hall were untrue, both of these parties being interested as creditors and then dealing with him in a business way, and not idle questioners, what value is to be attached to his evidence given under the circumstances attending this case?

See Hennion's testimony, p. 83, l. 7-16.

Reuben's testimony, p. 92, l. 17-40; p. 93.

Reuben flatly denied the statement of Hall that he had informed William of the Cooley debt, and he swears positively that he had never mentioned the Cooley debt to William and further that Hall and he had agreed that nothing should be said to William about the Cooley debt because they knew that William would then have nothing to do with it. Is this not entirely consistent with the acts of Hall, and in keeping the Cooley debt from the statement, and in refraining from saying anything about it at any of their interviews.

Reuben further swears (p. 99, l. 21-30) that to his knowl-

edge William never heard of Cooley's debt up to the time of giving the bill of sale.

Of whom could William make inquiry that he did not?

He had all reasonable assurance from all parties to whom he could be expected to look, that there was no such debt as Cooley's.

The figures in lead pencil on the back of exhibit No. 2 should not prejudice William. The figures were Hall's beyond doubt.

Hall's testimony, p. 155, l. 36-40 ; p. 156.

He did all the figuring.

William swears, p. 145, l. 25-28.

Q (Showing witness exhibit No. 2.) Do you know whose figures those are on the back of that?

A I think they are all Mr. Hall's figures.

Also p. 146, l. 1-12.

Q Can you tell anything about those figures, (referring to exhibit No. 2.)?

A Well, I know there was a difference of valuations, *but what figures they are I cannot tell.* I know I did not pay much attention to those.

Q Why not?

A Because, as I told you before, Mr. Hall valued them, so he said, at somewhere in the neighborhood of two thousand five hundred dollars. I told him I would not listen to anything of that sort.

Hall swears they look like his figures (p. 145, l. 30-40.)

Reuben swears that Hall did all the figuring and writing (pp. 106-107.)

We submit that the learned Master erred in his finding that no explanation was made as to these figures, and it appears sufficiently, from the evidence, that these were Hall's figures, which were not taken into consideration by any of the parties in the transaction, and that, in particular, William did not regard them.

If William had been engaged in the perpetration of a fraud and had made these figures himself, or had known

that they represented anything which might lead to his betrayal, would he have left them unerased, or, himself, produced the papers? The presumption must be to the contrary.

The matter of the disposition of the Cooley debt by the stock of the Shoe Heeling Company is dismissed by the Master as of no accont, but we contend that it is a most important consideration in deciding this case.

It, of itself, accounts for the keeping from William all knowledge of the Cooley debt.

A careful reading of these pages and of Hall's testimony (pp. 57-58-59) shows that there was something in this matter, sufficient, we submit, when taken together with Hall's conduct in this transaction with William as regards the Cooley claim, to throw the weight of evidence with us.

Hall was all anxiety, in the first instance, to make the sale to William, as it was made, and, afterwards, all anxiety to be relieved from the Cooley debt.

It is true that Reuben made some statements in the office of Cooley's attorneys, which seem at first sight utterly inconsistent with his other statement, but it must be considered that he was greatly embarrassed by being subjected to examination under such circumstances, a levy then having been made under the judgment which he had confessed.

Mr. Coult testifies (p. 75) that Reuben said on that occasion that the debts of the firm amounted to about $350, outside of Cooley's, and that Reuben said if Cooley would come down to the shop the next morning, his brother would make an arrangement with him to satisfy the judgment.

But Mr. Cooley himself testifies (pp. 72-73-74) that Reuben said on the same occcasion that the debts figured up "about four or five or six hundred dollars," and that Reuben then said (p. 72, l. 18-22) that he (Reuben) would work his finger ends off to pay this debt, which is entirely inconsistent with the view that William was to adjust it, or that

he (Reuben) regarded it as a matter to be saddled upon William.

Reuben's explanation of this interview on pp. 100-101, shows that he must have been embarrassed, and that he possibly made confusing statements, and this fact and the difficulties attending his explanation of it, while on the witness stand, has probably caused the learned Master to attach but little, if any, value to his testimony, which has operated to the prejudice of William; but there is nothing contradictory or inconsistent in the statements or evidence of William. In fact, he is the only one of the three principal parties whose conduct and statements are consistent throughout.

The firm was insolvent without the Cooley debt, i. e., unable to pay its debts in full at maturity; and William had a right to so consider it without causing the inference of the Master that this indicated knowledge on his part of other debts.

Hall is certainly entitled to but little credit.

He is flatly contradicted by William, Reuben, Crowell and D. A. Hall in essential particulars.

N. J. Court of Errors and Appeals.

WILLIAM H. HARRISON,
Appellant,
and
JOHN L. COOLEY,
Appellee.

On Bill, &c.

POINTS OF APPELLEE.

I.

The evidence in this case discloses clearly the facts that the conveyance of the partnership effects from A. F. Hall and R. M. Harrison, the partners, to William H. Harrison, was made with the express intention on the part of R. M. Harrison, by whom the transfer was in fact made for both partners, of defrauding the creditors of the firm, and that his brother, the purchaser, knew of this intent and aided him in carrying it into effect. That the sale was therefore void as against the appellee.

II.

That the effect of the transfers made by Hall & Harrison to William H. Harrison was to place all the assets of a shaky firm, on the brink of bankruptcy, in the hands of the brother of one of the partners, for a small and grossly inadequate consideration, leaving the unsecured creditors of the firm, to whom in equity the assets belonged, wholly unprovided for.

III.

That if we include in the consideration paid the worthless note held by the purchaser against his brother, still the sale could not be supported—it would be an illegal and wrongful application of partnership property to a private individual debt of one of the partners.

See cases cited in opinion.

IV.

The facts proved and admitted show a guilty knowledge on the part of W. H. Harrison of the purpose on the part of his brother to defraud his creditors, and active participation on his part in that effort.

V.

The evident purpose of two bills of sale was to deceive, defraud and cheat. No other reasonable explanation of them has been or can be given; its only object was to make an apparent paper title to the property, and exclude the creditors of the firm. They were the only sufferers, and the inference is plain and irresistible that this was intended.

JOS. COULT,

Of Counsel with Appellee.