St. John's Law Review

Volume 5, December 1930, Number 1 Article 17

Banks and Banking--Following Trust Funds in Bank Deposits (National City Bank of New York v. Waggoner, 230 App. Div. 88 (1st Dept. 1930))

St. John's Law Review

default.[3] Thus a non-resident defendant, by avoiding service of an order of the court to arbitrate, could nullify a just obligation.[4] To do away with the evils thus resulting, section 4A was enacted in 1927, which makes the agreement self-operative without the need of a court order. This statute works no undue hardship on the parties. A statute requiring an analogous election in judicial proceedings has been held to be constitutional.[5] A temporary injunction directed against the arbitration proceedings would insure the unwilling party all his rights.[6] Such a procedure would not be against public policy and would fit our modern business plan by preventing unscrupulous persons outside the jurisdiction from escaping their contractual duties and obligations where a valid and effective award is rendered against them.

G. L.

BANKS AND BANKING—FOLLOWING TRUST FUNDS IN BANK DEPOSITS.—Defendant Waggoner, through the instrumentality of telegrams purporting to come to plaintiffs from their correspondent banks, induced them to deposit sums of money with the Chase National Bank, in this city, to the credit of the Bank of Telluride, of Colorado, an insolvent bank, of which he was president. Waggoner thereupon caused three cashier's checks to be drawn on the Chase National Bank which were blank as to date, name of payee and amount, and after filling in the blanks with the knowledge of the Chase National Bank, he procured one of them to be certified, the amount thereof being charged against the sum deposited by plaintiff banks. The second check, defendant endorsed in blank and presented the same to the Central Hanover Bank and Trust Company, which bank, having knowledge of the manner in which it had been issued, refused payment thereof, but upon endorsement by the defendant deposited it to the credit of the Telluride Bank. The third check was similarly deposited with the Central Bank, which procured the two checks to be certified by the Chase Bank and when paid applied the amount thereof to a worthless past indebtedness of the defendant Waggoner and corporations in which he was interested. In an action to determine the rights of and relations between the parties and for an accounting, in which the Central Bank attacks the sufficiency of the complaint, *Held*, the complaint states a cause of action to charge the corporate defendant as trustee *ex maleficio;* it is, however, incumbent upon the plaintiffs to trace the funds so deposited by them through the depositary to the corporate defendant. McAvoy, *J.*, dis-

[3] Bullard v. Grace Co., 240 N. Y. 338, 148 N. E. 559 (1925).
[4] Bankers & Shippers Ins. Co. v. Liverpool Marine & Gen. Ins. Co., 24 L. Rep. 85 (H. L., 1926).
[5] York v. Texas, 137 U. S. 15, Sup. Ct. (1890); (1930) 39 Yale L. J. 575.
[6] Kitts. v. Moore, 1 Q. B. 253 (1894).

sents in opinion in which Merrell, *J.*, concurs. National City Bank of New York v. Waggoner, 230 App. Div. 88, 243 N. Y. Supp. 299 (1st Dept., 1930) *aff'd* without opinion 254 N. Y. —— (1930).

Courts of equity are frequently called upon to adjust property rights where property which has been stolen or procured by devious means has passed through more than one hand. The doctrine uniformly applied is that where property has been wrongfully misapplied or a trust fund wrongfully converted into another species of property, if its identity can be traced, it will be held in its new form liable to the rights of the original owner.[1] "Equity only stops the pursuit when the means of ascertainment fails, or the rights of *bona fide* purchasers for value, without notice of the trust, have intervened." [2] In tracing funds, as in the principal case, the form which the moneys take may change and the successive changes render the pursuit difficult, but they do not, however, suffice to render it unavailing. Money may be traced into and through a deposit account, notwithstanding the fact that the specific money may go into the bank's general funds.[3] The fact that checks payable out of such funds are certified does not prevent the application of the rule; certification cannot have any greater effect in curbing its operation than would payment.[4] The allegations of the complaint charge the Central Bank with knowledge of the fraud by which the certifying bank came into possession of the funds and of the rightful ownership in plaintiffs. The funds were impressed with a trust in favor of plaintiffs when deposited with the Chase Bank and the absence of the conventional relation of trustee and *cestui que* trust between the Central Bank and the plaintiffs is no obstacle to holding that bank as trustee of the fund. The pronouncement of the Court is in accord with equitable principles to grant relief by construing the relationship between the true owner of property and a party who wrongfully obtains ownership to be one of trust.

R. L.

BANKS AND BANKING—JOINT ACCOUNTS—FURTHER APPLICATION OF STATUTORY PRESUMPTION OF GIFT.—Deceased had opened a savings bank account in the joint names of herself and the respondent. Later she closed the account and deposited the money withdrawn to a new account in her own name. Shortly before her death, desiring

[1] Story, Eq. Jur., sec. 1258; Cavin v. Gleason, 105 N. Y. 256, 11 N. E. 504 (1887); Holmes v. Gilman, 138 N. Y. 369, 34 N. E. 205 (1893); Newton v. Porter, 69 N. Y. 133, 25 Am. Rep. 152 (1877); see, also, Note (1930) 4 St. John's L. Rev., 239.

[2] Newton v. Porter, *ibid.*, at 139; Perry, Trusts, sec. 829.

[3] Van Alen v. American National Bank, 52 N. Y. 1 (1873); Importers & Traders Nat. Bank v. Peters, 123 N. Y. 272, 278, 25 N. E. 319 (1890).

[4] Weiss v. Haight & Freese Co., 152 Fed. 479 (C. C. D., Mass., 1907).