

Suit No. 70 of 1864.

1864.
January.

BAMANJI MA'NIKJI and others *Plaintiffs.*

NAOROJI PA'LANJI and others *Defendants.*

Debtor—Trustees—Assignment by Debtor of Property to Trustees—Attachment.

A *bonâ fide* assignment by a debtor of his entire property to trustees for the benefit of his creditors divests him of any interest which can be the subject of attachment subsequently issued in execution of a decree against such debtor, until the trusts of the deed of assignment have been carried out.

THE plaintiffs were the trustees, under an indenture of assignment dated the 23rd of September 1862, and executed by one Sorâbji Nasarvânji Dundas for the benefit of his creditors. The defendant Naoroji Pâlanji was a creditor of Sorâbji Nasarvânji, but had not actually executed the deed. The other defendants were auctioneers, who held certain moneys the proceeds of certain goods formerly the property of the debtor, which had been sold by order of the plaintiffs as trustees, and which proceeds the defendant Naoroji Pâlanji had attached in execution of a decree in a suit filed by him against Sorâbji Nasarvânji subsequently to the date of the assignment in trust.

Lewis (Advocate General) now moved on behalf of the plaintiffs that the defendant Naoroji Pâlanji might be restrained by injunction from receiving, and the other defendants from paying to Naoroji, the amount of his execution under which he had attached the proceeds of sale in their hands.

Dunbar, for the defendant Naoroji Pâlanji, opposed the motion.

Bayley for the defendants other than Naoroji Pâlanji.

SAUSSE, C.J.:—This suit was filed for the purpose of obtaining a declaration that the defendant Naoroji Pâlanji was bound by the trusts of a composition-deed or agreement dated 23rd September 1862, by which one Sorâbji Nasarvânji Dundas purported to convey the entire of his property to trustees for the benefit of his creditors.

It also sought to stay all proceedings in a suit in which the defendant Naoroji had obtained judgment, and sued out execution against the goods of Sorábji, on the ground that such a proceeding was a fraud upon the plaintiffs and the several other creditors who had signed the trust-deed or agreement.

The plaintiffs now apply for an injunction to restrain the defendant Naoroji from receiving, and other defendants who as auctioneers had sold this property for the trustees from paying to Naoroji, the amount of his execution under which he had attached the proceeds in their hands, and also that the amount may be brought into court by the auctioneers.

It appeared that Sorábji, having become embarrassed in his circumstances prior to September 1862, filed a petition in the Insolvent Court, but at the desire of several creditors, of whom the defendant Naoroji was one, he had withdrawn that petition, and upon the 23rd of September 1862, by a Gujaráti document, in effect agreed to assign all his "goods, property, and outstandings to five persons in trust to divide the proceeds amongst his creditors." In accordance with that agreement he handed over the property &c. to the trustees, who took possession, and caused it to be sold by public auction. Fifty-eight out of sixty-five creditors had signed the trust-deed, but the defendant Naoroji had not done so. There is no question as to the facts, or as to the *bona fides* of this proceeding by the debtor. After a great portion of the property had been sold, the defendant Naoroji filed a plaint, in May 1863, to recover the amount of his debt, and obtained a judgment *ex parte* for the amount. He then issued execution, and attached in the hands of the auctioneer so much of the proceeds of the trust-property as would be sufficient to discharge his claim.

The debtor, Sorábji, and the plaintiffs, on behalf of themselves and the other creditors who signed the deed, insist that the acts and declarations of Naoroji in respect of this trust-arrangement were tantamount to signature, and that he should be bound thereby. They also insist that this *bona fide* transfer of property by the debtor Sorábji to trustees for the benefit of creditors had in effect divested him of any interest in it, and that the proceeds of that property cannot now be taken in execution under a judgment subsequently recovered against Sorábji by the defendant Naoroji Pálanji.

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We consider that we are bound to follow the decision in *Harland v. Binks* (a), which has been relied upon in support of the latter objection. The case of *Janes v. Whitbread* (b) is to the same effect, and the case of *Pickstoke v. Lyster* (c) shows how highly the courts favour such a proceeding by a debtor. Several decisions in Courts of Equity affirm the principle upon which those cases were decided. The *bonâ fide* assignment of the entire property of Sorâbji to trustees for payment of his creditors divested him of any interest which could be the subject of execution until those trusts had been carried out. Thus the property did not belong to Sorâbji at the time the proceeds were attached in the hands of the auctioneers by the defendant Naoroji.

The defendant must be restrained from receiving, and the auctioneers from paying, the amount of that execution out of this trust-property. The auctioneers are now at liberty to pay the proceeds to the trustees for distribution amongst the creditors of Sorâbji, for we do not think it necessary, under the circumstances of this case, to order the money to be brought into Court.

The object of this suit, so far as the creditors are concerned, will be attained by granting this injunction, as they are not interested in resisting any other proceeding which the defendant Naoroji may think proper to pursue against the debtor Sorâbji, so long as this trust-fund be not interfered with.

The defendant Naoroji will do well to consider whether any useful purpose will be gained by his obliging the plaintiffs to proceed to a hearing upon the question of costs only, when they have by this order practically succeeded in obtaining the entire object of this suit.

In form the costs of this application must be costs in the cause, except as to the taxed costs of the auctioneers upon this motion, which, being in the nature of an interpleader motion, they may retain out of the funds in their hands. The plaintiffs to be at liberty to include such costs as costs in this suit.

(a) 15 Q. B. Rep. 713. (b) 11 C. B. Rep. 406. (c) 3 M. & S. 371.