2nd. That in any event the claimants could not be allowed to rank, as they had parted with no new consideration and incurred no new obligation on the strength of the notes, but had simply taken them as security for an antecedent debt, *causa lucrandi*, which did not constitute them holders for value as against the creditors of the estate.

The contestants cited Chitty, Bills 82, 88, 91, 94, Dorion and Macrae, 742. James' Insolvency Act of the United States, p. 153, 183.

The assignee held on both grounds that the claimants could not rank, and rejected their claims.

Torrance, J., without entering upon the second of these grounds, confirmed the judgment of the assignee in the three cases upon the first alone. After reading sub-section 3 of section 8, of the Insolvent Act, his Honour said that as to the transaction between James Muir and Davis, Welsh & Co., there was no doubt that it was an illegal attempt to create a security upon the estate of persons then insolvent. The judgment would therefore be confirmed with costs in all three cases.

Judgment of the assignee confirmed.

In re Catherine Morgan, Insolvent v. John Whyte, et al.

Held:—That the privilege of the landlord on the proceeds of the effects found on the premises leased, is not affected by the Insolvent Act of 1864, and has precedence over the privilege of the assignee and the insolvent for the costs of their respective discharges under the Act. [13 L. C. J., 187.]

In the case of Catherine Morgan, an insolvent, John Whyte, official assignee, prepared a first and final dividend sheet, in which he collocated himself for the sum of $45, for the costs of procuring his discharge as assignee, and also collocated the insolvent for a like sum of $45 for the costs of her discharge. The entire proceeds of the estate, with the exception of a balance of $31 61, were absorbed by these and other expenses of winding up.

The claimant, Biron, contested this collocation, claiming that the sum of $80, due him by the insolvent for rent, should have been collocated to him by privilege before the above mentioned two sums of $45, and praying that the dividend sheet be set aside, and a new sheet prepared, collocating him for $80, by privilege.

Both the assignee and the insolvent appeared by counsel and filed answers to the contestation, alleging, first, that it was not made within the six days allowed by law, and came too late; and, secondly, that the collocation of the two sums of $45 each as a first privilege had been made in accordance with law.

The parties went to proof before the assignee. The assignee filed an admission that the proceeds of the estate were the proceeds of goods and furniture found in the premises leased by Biron to the insolvent. The clerk of the assignee was examined to prove that the charge of $45 was the usual charge.

On the 2nd April, 1869, the assignee gave judgment both on his own claim for $45, and on the insolvent's claim for the same sum, holding 1st, that the contestation being fyled after the expiration of the six days allowed by law, was null; 2nd, that the assignee and the insolvent were respectively entitled by law to be collocated for the sum of $45, by privilege.

The contestant appealed from this decision.

Torrance, J.—The contesting creditor is the proprietor of the promises occupied by the insolvent. He has a claim for rent due, and objects to two items in the dividend sheet; 1st, the sum of $45 for the assignee's discharge; and, 2nd, a like sum of $45 for the insolvent's discharge. Sec. 5 of the Insolvent Act, sub-section 4, says, "in the preparation of the dividend sheet, due regard shall be had to the rank and privilege of every creditor, which rank and privilege, upon whatever they may be legally founded, shall not be disturbed by the provisions of this Act." As to the costs of the insolvent's discharge, and the costs of winding up the estate, the Act simply says, that they shall be paid out of the assets. With respect to the time of fyling the contestation, it was not fyled too late. The Court is therefore of opinion to reverse the judgment of the assignee, and to maintain the contestation.

The judgment is as follows:

"I the undersigned Judge, etc., having heard etc., considering that the Insolvent Act, S. 5 S. S. 4, has declared that the rank and privilege of creditors shall not be disturbed by the provisions of said Act: considering that there is error in the dividend sheet prepared by the assignee John Whyte, of date 3rd March, 1869, inasmuch as the sum of $45 for assignee's discharge, and the sum of $45 for insolvent's discharge are made a first charge upon the assets of the insolvent, and before the privilege of the lessor, which privilege should have precedence, do annul and set aside said dividend sheet so far as concerns the said items, and do order that the said contestant be collocated by privilege and preference before the allowance and collocation of the said two items, with costs to the said contesting party, as well of his contestation before the said assignee as of the present appeal."

Judgment reversed.

UNITED STATES REPORTS.

SUPREME COURT, UNITED STATES.

Helme v. Life Insurance Co.

A custom among life insurance companies to allow thirty days' grace for the payment of premiums, notwithstanding a clause of forfeiture for non-payment on the day they become due exists in the policy, is valid to interpret the contract, and may be proven by the insured.

Evidence that the practice of the company was to give notice of the time at which the premiums fell due, and that they omitted to do so on the occurrence of the default in question, or that they so dealt with the insured as to put her off her guard, is admissable as evidence, from which the jury may draw the conclusion that the insured was misled by the company, the company cannot take advantage of a default which they have themselves contributed to or encouraged.

Error to the District Court of Philadelphia.

Opinion by Thompson, C. J.

The plaintiff below offered on the trial to prove a custom among life insurance companies to allow thirty days grace for payment of premiums due,