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MARK B. DUNNELL

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been paid or satisfied, except as specified in the summons, to his knowledge, information, or belief. (6094-6096)

4608. Pleadings—Trial—Judgment—The party summoned may by answer deny that the judgment was duly rendered, or that he was master, owner, or part owner of the boat or vessel when the cause of action against it arose, and he may set up any defence which has arisen since the rendition of judgment, but no other defence. The party issuing the summons may demur or reply to the answer, and the party summoned may demur to the reply. The issues shall be tried, and judgment, with costs, shall be rendered and enforced in the same manner as in a civil action. (6097, 6098)

4609. Appeals—In all cases under this chapter, if judgment be rendered in favor of the plaintiff, the master, owner, agent, or consignee of the boat or vessel, and any other person interested, may appeal from the orders or judgment of the court as in other cases. (6106)

12-388, 269.

4610. Limitation of action—All actions under this chapter shall be commenced within one year after the cause of action accrues. (6107)

36 Fed. 197.

CHAPTER 89

ASSIGNMENTS FOR BENEFIT OF CREDITORS

4611. Requisites—Every assignment made by a debtor of the whole or any part of his estate, real or personal, in trust for the benefit of creditors, shall be void unless the assignee be a resident freeholder of the state, and unless the assignment be in writing, subscribed and acknowledged by the assignor, and be filed with the clerk of the district court of the county wherein the assignor, or one of the assignors if there be more than one, resides, or wherein the business in reference to which the same is made has been principally carried on. (4227)

1. Nature of proceeding—Statute a regulation not a grant of power. A mere regulation of common law assignments for the benefit of creditors. Such assignments are the voluntary acts of the debtor. No statutory authority can exact them and when made they partake of the nature of a contract (28-93, 95, 9+585; 77-407, 409, 80+361; 33-412, 414, 23+856; 39-520, 522, 40+827; 93-274, 101+167). The existence of a bankrupt act does not suspend right to make a voluntary assignment for the benefit of creditors (39-520, 522, 40+827). Proceeding is of a judicial nature (32-122, 123, 19+652; 24-232, 241; 26-141, 143, 1+830; 24-295, 297). It is under the general supervision of the court (See § 4620). The assignee is the officer of the court (69-69, 74, 71+921), and the property assigned is in custodia legis (69-69, 74, 71+921). See 32-60, 64, 19+347; 33-412, 415, 23+856). Object of statute to protect creditors of assignors and to regulate the duties of assignees. Its aim is to secure an equal distribution of the debtor's property without preferences and to place the estate and the assignee under the control of the court so as to insure a faithful administration of the trust (41-304, 307, 43+67; 93-274, 277, 101+167. See 32-122, 123, 19+652). The statute is not, like the insolvency law of 1881, a bankrupt act (32-60, 19+347).

2. Compared with insolvency law of 1881—33-412, 414, 23+856; 32-60, 19+347; 77-407, 409, 80+361; 62-501, 505, 65+78, 632.

3. To what applicable—An assignment not good under the insolvency law of 1881 may be held good under this section (41-3, 4, 42+539). If an assignment does not affirmatively appear on its face to be under the insolvency law of 1881 it will be conclusively presumed to be under this section (77-407, 80+361).

4. Assignor must be resident freeholder—60-358, 62+325; 77-407, 80+361; 46-138, 48+687.

5. Formal requisites—A failure to comply with the provisions of this section does not render the assignment void but merely voidable at instance of creditors and subsequent purchasers in good faith. It is good between the parties (93-274, 101+167. See 68-414, 418, 71+679). Statutory requirements not applicable to foreign assignments (31-136, 16+700). Provisions as to execution, etc., mandatory (28-118, 9+636; 68-414, 417, 71+679). Assignment must be the personal act of the assignor. Power of attorney held insufficient (68-414, 71+679). Acknowledgment by corporation held insufficient (66-4, 68+111). Assignment held void for want of notary's seal to acknowl-

edgment (28-118, 9+636). Acknowledgment by surviving partner held sufficient (46-25, 48+441). Subscription and acknowledgment of partnership assignment held sufficient (27-255, 6+793).

6. **By partnerships**—27-255, 6+793; 46-25, 48+441. See 6-375, 260; 13-412, 381; 74-439, 447, 77+236; 65-184, 68+5; 37-527, 35+435.

7. **Filing**—26-141; 143, 1+830; 24-295, 297; 36-305, 30+812; 73-308, 76+41.

8. **Conflict of laws**—31-136, 16+700; 55-18, 56+255; 64-339, 67+73; 58-205, 59+1003; 58-301, 59+1023; 38-403, 38+104; 46-138, 48+687; 89-98, 109, 94+218; 41-325, 43+385.

9. **Fraudulent intent renders voidable**—28-93, 9+585; 33-412, 415, 23+856; 35-194, 28+252. See 2-264; 226; 3-389, 282; 6-305, 213; 6-375, 260; 23-242; 4-204, 146; 4-148, 99; 3-364, 257; 22-247; 6-535, 372; 13-326, 299; 8-477, 427; 7-40, 24; 7-345, 271; 3-377, 271; 36-49, 30+126.

10. **Qualifications of assignee**—The assignor must appoint a person competent to protect the rights of all parties interested in the assignment (6-375, 260. See 58-313, 59+1044; 58-205, 59+1003).

11. **Releases**—An assignment in favor of only those creditors who will file releases is void (35-194, 28+252. See 70-290, 73+146; 39-520, 40+827).

12. **Effect of defaults of assignee**—After the court has acquired jurisdiction of the proceedings by the filing of a proper assignment no defaults of the assignee will affect the validity of the trust or the jurisdiction of the court (41-304, 43+67; 32-71, 19+385).

13. **Construction**—Statute remedial and to be liberally construed (41-304, 307, 43+67; 24-232, 240). Schedule held not to limit general description in deed (38-315, 37+448. See 6-375, 260). General words of transfer are limited by subsequent words of description (6-375, 260).

14. **Collateral attack**—If the assignment is void creditors may seize the property on legal process as if no assignment had been made and set up its invalidity in an action by the assignee (77-407, 80+361).

15. **Effect**—Does not supersede prior attachment or garnishment (36-305, 30+812). Gives to creditors through assignee rights of attaching creditors (89-98, 94+218). On a prior deposit to pay a creditor (24-216).

16. **Title of assignee**—Assignee not a bona fide purchaser (28-93, 96, 9+585; 6-305, 213; 23-242, 254; 38-315, 316, 37+448). Holds legal title and all the equitable interest of the assignor in respect to the property covered by the assignment (31-244, 246, 17+381; 90-169, 95+1114; 4-270, 190). Succeeds to all the personal property wherever situated (31-136, 16+700; 55-18, 56+255). Except as modified by statute assignee takes subject to all defences against his assignor (75-168, 77+820). He does not, as at common law, stand in the shoes of his assignor (89-98, 108, 94+218). He takes free from statutory interest of the wife of the assignor (See 71-61, 73+640).

17. **Powers and duties of assignee**—Assignee bound to exercise due diligence and good faith in the administration of his trust (36-66, 68, 30+304; 24-232). Represents the creditors not the assignor (60-397, 62+383; 69-69, 71+921; 69-124, 71+924; 89-98, 108, 94+218). He cannot delegate his trust but he may employ agents and attorneys to assist him (25-509). His authority extends to the property of the assignor in other states. He receives the property belonging to the insolvent estate, converts it into money, and pays and discharges the debts by equal proportional distribution among the creditors, recognizing valid and subsisting contracts theretofore entered into by the assignor and instituting proceedings to set aside all such conveyances and transfers as are fraudulent or void as to creditors (89-98, 108, 94+218). Holds any surplus in trust for assignor (32-60, 19+347). Duty to protect and defend the assigned property and make it available for the payment of claims (31-505, 510, 18+645). Not required to invest funds. When liable for interest (49-170, 51+909).

18. **Miscellaneous**—Irrevocable (48-396, 51+222). Preferences allowable (48-396, 51+222). Reformation (53-201, 54+1111). Estoppel to attack (51-1, 52+974). Effect of appointment of receiver under G. S. 1894 c. 76 (62-501, 65+78, 632). Assignor must convey his entire interest in the property (3-389, 282). Liability of assignee for rent (57-121, 58+689; 60-305, 62+335). Deed of assignment how far controlling (39-520, 40+827; 41-3, 6, 42+539; 42-22, 43+486; 70-290, 73+146).

4612. Assignment of real estate—Record—If land or any interest therein be embraced in the assignment, a copy thereof, certified by such clerk, shall be filed for record with the register of deeds of the county wherein the land lies; and every such assignment not so filed shall be void as against any subsequent purchaser in good faith and for a valuable consideration of the same land, or any interest therein, whose conveyance is first duly recorded, and as against any attachment levied thereon or judgment lawfully obtained against the person in whose name the title to such land appears of record prior to the filing for record of such certified copy. (4228)

40-494, 42+398; 58-301, 309, 59+1023; 68-233, 71+31; 38-315, 37+448.

4613. Duty of clerk—The clerk shall indorse upon such assignment the day, hour, and minute of filing the same. The proceeding shall be entered in his

register, and all papers filed and orders made in the matter of the assignment shall be noted therein as in the case of a civil action. (4237)

32-71, 19+385.

4614. Schedule of debts and estate—Within ten days of making any such assignment, the debtor shall file with such clerk a schedule, under his oath, containing:

1. A list of the names of all his creditors, and the place of residence of each, if known to him, and, if not, a statement to that effect.

2. A statement of the sum owing to each creditor, the nature of the debt, the cause and consideration thereof, and the place where it arose, and, if secured by judgment, mortgage, collateral, or otherwise, the nature of the security.

3. An inventory of his estate, real and personal, in law or in equity, showing the nature and value of each item thereof, and all incumbrances thereon to the best of his knowledge, information, and belief. (4230)

Failure to file not fatal (26-141, 1+830; 32-71, 74, 19+385). Schedule as evidence (49-322, 51+1056). Schedule held not to limit property conveyed by deed of assignment (38-315, 37+448). Court may require assignee to file or correct inventory (26-141, 1+830; 32-71, 75, 19+385).

4615. Assignee's bond—Before entering upon the duties of his trust, and not later than five days after the filing of such schedule, the assignee shall file with such clerk a bond to the state, to be approved by a judge of such court, in an amount at least double the value of the estate assigned, as shown by the inventory, if filed, and, if not, by affidavit of the debtor, conditioned for the faithful performance of his duties. At any time thereafter, in its discretion, the court may require the assignee to give a new or an additional bond. Whenever the assignee fails to perform any of his duties as such, or to comply with any order of the court, upon leave of the court first obtained, any creditor may bring an action upon such bond to obtain satisfaction of his claim. (4231, 4236)

Filing bond not essential to initiation of trust and jurisdiction of court. Powers of assignee before filing (41-304, 43+67; 69-69, 75, 71+921; 24-295). Retention of bond by judge until after time for filing (35-248, 28+504). Time for filing when no schedule filed (32-71, 19+385). Filing bond before schedule (26-141, 143, 1+830). Assignee removed and receiver appointed. Action by receiver on bond of assignee (35-340, 29+156). Failure to obtain leave of court before action on bond not a ground for demurrer (78-228, 80+1118). Liability on bond. Failure to present claim to probate court (77-59, 79+651).

4616. Notice to creditors—Upon taking possession of the estate assigned, the assignee shall forthwith give at least one week's published notice of the assignment, and he shall also forthwith mail such notice to each creditor who is named in the schedule, or of whom he may receive information. (4232)

39-382, 40+368.

4617. Fraudulent conveyances—In all cases of general assignments for the benefit of creditors, the assignee shall represent the creditors of the assignor as against all transfers and conveyances of his property which were fraudulent as to them, and shall have all the rights of such creditors in their avoidance. (4233)

Applicable to assignments under insolvency law of 1881 (37-82, 84, 33+117; 46-80, 81, 48+447). Assignee may sue in his own name without joining creditors (See § 4055 Note 4). May maintain action to determine adverse claims (31-505, 18+645). Presumption that assignee represents creditors who are entitled to attack transfer (67-287, 69+920; 80-223, 228, 83+50; 88-35, 92+511). Assignee may avoid chattel mortgage executed before but not filed until after assignment (See § 3461 Note 7); or a conditional contract for the sale of personalty (See § 3476 Note 1); or any fraudulent conveyance (70-125, 130, 72+963; 73-198, 201, 75+1053; 46-80, 48+447; 75-168, 173, 77+820; 48-396, 51+222; 47-507, 50+696; 80-223, 83+50; 68-282, 71+389), whether within or without the state (89-98, 94+218). May replevy personalty transferred in fraud of creditors or sue the vendee for the value (73-198, 75+1053). Pleading appointment as receiver (43-297, 45+434; 67-24, 69+475).

4618. Proof of claim—Order of payment—No claims or demands except debts owing to the United States or to the state, or taxes or assessments

against the debtor or the property assigned, shall be paid, unless proofs thereof verified by the creditors be presented to the assignee. After payment of the charges and expenses of making the assignment and executing the trust, he shall pay the debts of the assignor in the order following:

1. Debts owing to the United States and to the state, and all taxes and assessments against the debtor or the property assigned, shall first be paid in full.

2. Wages of servants, laborers, mechanics, and clerks for services performed for the debtor within three months next preceding the assignment shall next be paid in full if there be sufficient wherewith to do so, and, if not, they shall be paid pro rata: but, to entitle any creditor to payment under this subdivision, his proof of claim must set forth facts showing that he is entitled hereunder.

3. All other debts shall be paid in full if there be sufficient left wherewith to do so, and, if not, they shall be paid pro rata: Provided, that no debt for which the creditor holds a mortgage, pledge, or other security shall be paid until he has exhausted his security, or has surrendered it to the assignee. (4234)

Subd. 1 (64-400, 402, 67+212; 70-393, 397, 73+151). Subd. 3 (46-25, 29, 48+441; 64-250, 252, 66+986; 85-433, 89+318). Charges of executing trust (80-188, 83+134).

4619. Payment of dividends—List of creditors—At least twenty days before paying any dividend or distributing any of the trust estate, the assignee shall file with such clerk a verified statement containing a list of all the creditors who have presented to him proofs of claim, as hereinbefore provided, and showing the nature and amount of each such claim; and, when any creditor thereafter shall present proof of claim to the assignee, he shall file a similar statement thereof, and pay nothing thereon until the expiration of twenty days thereafter. (4238)

4620. Powers of court—Removal and discharge—The district court shall have supervision of all proceedings under this chapter. On petition of a creditor, the court, in its discretion, may from time to time require the assignee to render an account, and to file a report of his proceedings and of the condition of the trust estate, and may order distribution thereof. For cause shown, it may, in its discretion, remove the assignee, and appoint another instead, who shall give bond as the court may direct; and the order of removal and appointment shall, in terms, transfer all the trust estate to the new assignee, and may be filed for record with the register of deeds of any county wherein any land affected by the assignment is situated. Upon removal of an assignee, the court may require him to deliver to the new assignee all property, books of account, and vouchers belonging to the trust estate, to execute all necessary transfers, and to render an account and report of all matters connected therewith. When such assignee has complied with all the orders of the court, and whenever any assignee has completed his trust, he may apply to the court for his discharge, first giving three weeks' published notice of such application; the last publication to be not more than three weeks prior to the hearing thereon. If upon the hearing the court is satisfied that the assignee is entitled to such discharge, it shall so order: but if, in its opinion, anything remains to be done by him, it shall require the performance thereof before making such order. But a discharge shall not be refused because of any failure of the assignee to comply with the forms of law, if no damage has thereby resulted to any person. Such order shall have the effect of discharging the assignee and his sureties from all further responsibilities in respect to the trust. When the trust estate is taken out of the hands of the assignee by proceedings in bankruptcy in the federal court, the assignee may be discharged upon showing that he has fully accounted with the trustee in bankruptcy, and turned over to him the whole trust estate. And when the trust estate is taken out of the hands of the assignee by legal proceedings in any court, or the assignment is declared void as to creditors, or for any reason the further ad-

ministration of the trust is rendered impracticable, inadvisable, or nugatory, the assignee shall in like manner be discharged. (4235)

Supervisory power of court (24-232, 241; 24-295, 297; 26-141, 143, 1+830; 41-304, 306, 43+67; 44-76, 46+204). Removal of assignee (24-232; 41-304, 306, 43+67; 58-205, 212, 59+1003; 58-313, 59+1044; 59-323, 61+330; 77-402, 80+300; 41-325, 43+385; 55-130, 56+587; 68-414, 419, 71+679; 77-59, 79+651; 4-13, 1; 6-375, 260). Court should disallow unauthorized claims without reference to agreement between assignor and assignee (24-232). Court cannot revoke or change assignment (48-396, 51+322).

CHAPTER 90

INSOLVENCY

[Inoperative while federal bankruptcy act is in force. 76-118, 78+1038]

4621. Assignment by insolvent—Whenever any debtor has become insolvent, or his property has been garnished, attached, or levied upon by execution, or other legal process issued against him for the collection of money, he may make an assignment of all his unexempt property for the equal benefit of all his bona fide creditors who shall file releases of their demands as in this chapter provided. Such assignment shall be executed, filed in accordance with, and governed by the laws relating to assignments for the benefit of creditors; and if made within ten days after garnishment, attachment or levy under execution, or other legal process for the collection of money, it shall operate to vacate every pending garnishment, attachment or levy and discharge the property therefrom upon qualification of the assignee, unless within five days thereafter he shall file with the clerk of the court where the assignment was filed, notice of his intention to retain all pending garnishments and levies, in which case it shall inure to the benefit of the creditors under the assignment and be prosecuted by the assignee, but the release of any debtor shall not operate to discharge any other party liable as surety, guarantor or otherwise for the same debt. (4240; '95 c. 66 s. 1)

4622. Receiver—Whenever any insolvent debtor shall confess judgment or do anything whereby any of his creditors shall obtain preference over any other such creditor, or shall omit to do any lawful thing to prevent any creditor from obtaining preference over any other, or shall not make an assignment under § 4621, within ten days after garnishment, attachment, or levy upon property under execution, or other legal process for collection of money, or shall conceal, remove, or dispose of any of his unexempt property, with intent thereby to delay or defraud his creditors, then or within sixty days thereafter any one or more of his creditors having claims against him aggregating at least two hundred dollars, may petition the district court, setting forth facts constituting one or more of said cases, and asking that a receiver be appointed of all the debtor's unexempt property, and for such other and further relief as such court shall deem proper. (4241)

4623. Same—Appointment—Powers—Duties—Such petition may be heard in any county designated by the court upon such notice to the debtor and any creditor about to be preferred, of the time and place of hearing as it may designate. It shall receive all pertinent evidence and determine the petition summarily. If it shall appear that such debtor has confessed judgment, or done anything whereby any creditor has obtained preference over any other, or has omitted to do any lawful thing to prevent such preference, or that he has not made assignment within ten days after such garnishment, attachment or levy, or that he has concealed, removed or disposed of any of his unexempt property with intent thereby to delay or defraud his creditors, then the court shall appoint a receiver with authority to, and who shall take possession of all the debtor's unexempt property, including that concealed, removed, or disposed of by such debtor in violation of any provision of this