Arches

Johnson v Champion, Wright & Johnson.

July 2.

Goodwin — Dr Collyer — Dr Wynne — Gostling

Dr Wynne ... I am Counsel for Wm James Johnson one of the Extors in y Will of Jn Johnson. Citation has issued & been returnd Sess: Trin: I. agt y Extors in a Cause of Substraction of Legacy, under the Will of the Jn Johnson of Chesthunt in Hertfordshire, who gave y Interest of his Fortune to his Wife for her life, & on her death, a Legacy of 50£ to Jn Johnson: the Will was proved 1759 — 1762 Jn Johnson the Legatee became insolvent & agreed with his Creditors to appoint Trustees, this Extor being one, to whom he assigned over all y Effects he was interested in, possessd of, or entitled to, for the benefit of his Creditors, in consideration of wch Assignment, he was to enjoy the same Liberty of Person, as if a Commission of Bankruptcy had issued agt him: the view in taking out such Commission, was to save expence —

1763. this insolvent Legatee has cited y Extor to pay the Legacy, who appears under protest, says the Affid: will shew, that on y death of y Widow in 1763, he paid this Legacy of 50£ to himself & co-Trustee, & swears it was rateably distributed amongst y Creditors: that only 19£ remains in their hands — he is still indebted 800£, that they have paid about 12 shillings in the Pound: that he is not liable to pay the Legacy over again — The Qu: then is, wh: Jn Johnson was intitled to, or entitled to this Legacy, on the Day the Assignment was made: This Legacy was given to him on y death of y Widow, but it was vested in him upon y death of y Testator, it was y payment only wch was postponed: there is nothing plainer, nothing better established in Law, than that a man is entitled to what is Debitum in præsenti, solvendum in futuro: if a Commission of Bankruptcy had issued, this was liable to be sold, it was valuable the Commiss: ers wd have been entitled, & this Assignment is y same as to its Effect, as y Commission of Bankruptcy wd have been: by being once vested in him, he might have devised it by will, & therefore no doubt but it was transferable with Regard to his Effects he now acknowledges having received all the benefit y Law wd give him, & all he proposed to himself from y Assignment, he does not deny its being paid over to y Trustees, fairly distributed: in what light then must he appear, after such an Assignment, wherein he covenanted to assist in y recovery of all Debts &c without any Objections to y proceedings of y Assignees, Creditors who have suffered so considerably by him, now to come & pray to be paid over again, & that has been fairly distributed as well as fairly paid; there don't seem y least pretence for his Claim, & the only Objection is that he has paid y Legacy to himself: it so happened, but there is no sort of colour to charge him with unfairness, for he was Extor with 2 Women: he was of fittest person to act, he was a principal Creditor: there cd be none therefore more proper for an Assignee; nothing surely can be so unreasonable as his demand; so I hope, Sir, you will allow Mr Gostling's Protest & dismiss my Client —

Dr Collyer ..... Wm Gostling has appeared under Protest, the Qu: is, wh: he shall not be obliged to appear absolutely? Protests of 2 Sorts general, as to the Jurisdiction of the Ct, or special, as to the Cause itself; & the Query will be, whether the matters alledged are sufficient for him not to appear absolutely? In a special Protest a Person may object to his Appearance, by reason of the Excommunication, Outlawry, or Release of the Party citing in the Cause of Legacy, because they wd appear from the Acts of Ct or upon Record: but when a special matter is alledged, he must appear absolutely, & give an Allon, with the Deed answerd, when it is of a private nature as an Assignment is: he confesses a Legacy to have been left, only says it was assigned over for payment of Debts: this is a private Transaction, entirely of a private nature & there is no Deed exhibited, it is mere Suggestion, & no Protest can be founded without any Evidence: upon the face of the Assignment, they pretend, it appears to have been made to a Trustee, they pretend, it appears to have been made to a Trustee, on 14th June 1762. & the Man did not become insolvent by the Extor, on 14th June 1762. & the Man did not become insolvent by the Widows death till 1763 — This Legacy then, was not, cd not become vested in the Assignment, he had it not, at the time when the Assignment was made: he cd not know whether it wd arise or not — he might not outlive the Widow — perhaps it might have been liable to a Statute of Bankruptcy — but besides the Assignments being very different from a Commission of Bankruptcy, this was such an Interest as the Commiss: ers cd not have disposed of at that time; it was a contingent Interest, & selling it cd have been a Fraud to his Admor, or a detriment to him, because his Debts might have been paid perhaps, & the Commission superseded before the Legacy was to come into possession — Shall the Extor, on the Plea of his being an Assignee, take possession, & do what he will? he has paid it, how? to himself truly, who cd never sue for it, since the Legatee himself, & not the Trustee, must be the Person to claim it — The first Question, is, wh: Gostling will appear absolutely, give an Allon, & exhibit the Indenture? it will be a future Consideration wh: the Legacy was so vested at the time of the Assignment, as to be conveyd by it.

Dr Hay Judge

The Legatee sues for a Legacy, the Extor protests (using the words improperly) for the Reasons in the Act, whereas the Proctor the rather have appeared absolutely, might have alledged payment, & prayd the Answer of the Party — If the Legatee had any right under the Will it was in 1759, not material wh: the Interest was contingent or present, it was vested in 1762, but not to be received till the death of the Widow. In 1762 he assigns over all his Effects, & it happened that the Extor was one of the Assignees — Goodwin does not deny the facts of the Assignment, or the Assignee's being paid the money by himself, as Extor, for the benefit of the Creditors or their receiving it rateably; but only says, that Mr Jn Johnson was not entitled to this Legacy in 1762, so that the Assignment cd not extend to this. The Reality of the Existence of such an Assignment not being disputed, there was no necessity for it to be exhibited, & the Qu: now is merely on a point of Law, viz. wh: the Legatee was or was not entitled to this Legacy in 1762 when the Assignment was made? I am of opinion it was clearly vested; he acquired the right on the death of the Testator in 1759 prior to the date of the Assignment, tho, the payment was deferred till the Widows Death, wch happened subsequently —

Debitum in præsenti, solvendum in futuro

Gostling said it was to save Expence ....

This Protest is in the nature of an Allon, the Facts, the point of Law, the whole is now before me, & I can not think the Legatee is entitled to his Legacy, it having been assigned over, paid, & distributed, for the Purpose of the Assignment