

564 (1898); 11 U.S.C.A. § 107f (1927); 2 Collier, Bankruptcy 1506 (13th ed. 1923). Thus where a creditor's suit in a state court results in the appointment of a receiver who takes possession of property of the bankrupt before the beginning of the four months period, this possession is superior to the claims of the trustee in bankruptcy. *Frazier v. Southern Loan Co.*, 99 Fed. 707 (C.C.A. 4th 1900); 5 Remington, Bankruptcy § 2057 (3d ed. 1923). This result obtains even though the receiver takes possession for the benefit of all creditors who might later intervene, rather than for the particular creditors instituting the suit. *Clements v. Conyer*, 32 F. (2d) 5 (C.C.A. 7th 1929); *Blair v. Brailey*, 221 Fed. 1 (C.C.A. 5th 1915); *Neely v. McGehee*, 2 F. (2d) 853 (C.C.A. 5th 1923). This possession of the state court receiver has been interpreted as an equitable attachment, thus likening it to an ordinary judgment lien. Williston, Effect of a National Bankruptcy Law, 22 Harv. L. Rev. 547, 562 (1909). Where, however, a state court receiver obtains possession of the bankrupt's property more than four months before bankruptcy as a result of a stockholder's bill for dissolution of a corporation, courts have usually required the receiver to transfer property so held to the trustee in bankruptcy. *Bank of Andrews v. Gudger*, 212 Fed. 49 (C.C.A. 4th 1914); *Miller v. Potts*, 26 F. (2d) 851 (C.C.A. 6th 1928); *In re Mullings*, 238 Fed. 58 (C.C.A. 2d 1916). It is to be noted that in none of these cases had any creditors actually filed claims with the receiver appointed to effectuate the dissolution. See *In re Knox Coal Co.*, 50 F. (2d) 248 (D.C. Ind. 1931). Thus in a case in which creditors had actually filed claims with the receiver more than four months before bankruptcy, the court denied the superiority of the claim of the trustee in bankruptcy to this property. *Cohen v. Mirviss Co.*, 178 Minn. 20, 226 N.W. 198 (1929), noted in 14 Minn. L. Rev. 658 (1930).

Several reasons may be suggested for arriving at one result when the receivership is sought by a creditor, and at the opposite result when a stockholder is seeking the appointment of a receiver. It has been argued that a stockholder should not be able to deprive creditors of their right to federal bankruptcy jurisdiction. *Bank of Andrews v. Gudger*, 212 Fed. 49, 54 (C.C.A. 4th 1914). But this argument applies equally to a receivership resulting from a suit by one creditor where other creditors wish to obtain bankruptcy jurisdiction; yet most creditors' receiverships upheld result from a single creditor's suit. Since the state court receiver in any case must pay off creditors before turning over any property to the corporation or its stockholders, it seems clear that any distinction between a creditor's suit and a stockholder's bill for dissolution must be based on the difference in the plaintiffs. This difference cannot be resolved in terms of the adverse nature of the receiver's claim as the test of whether a claim is adverse has been applied primarily to determine whether the bankruptcy court should exercise summary jurisdiction over one asserting a property right. The courts have apparently decided the present question as one of competing jurisdiction rather than one presenting substantial property rights. They have upheld only those receiverships which result from actions brought more than four months prior to bankruptcy by plaintiffs sufficiently hostile to the corporation. See *Griffin v. Lenhart*, 266 Fed. 671, 674 (C.C.A. 4th 1920). Since this can be determined equally well by a summary or plenary proceeding, the court in the instant case properly considered itself bound by its previous decision in the summary proceeding.

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Conflict of Laws—Statutory Construction—Tort and Conveyance Aspect of Transfers of Foreign Land—[Federal].—A *foreign* corporation doing business in New York

transferred *foreign* and New York real property to the defendant creditor who had reason to know of the corporation's insolvency. Section 114 of the New York Corporation Law provided that officers, directors, and stockholders of *foreign* corporations doing business in New York should be liable for "illegal transfers" made when the corporation is insolvent, to the same extent and in the same manner as officers, directors and stockholders of *domestic* corporations under section 15. Cahill's Cons. L. N.Y. 1930, c. 60, § 114. Section 15 imposed personal liability upon officers, directors, and stockholders of *domestic* corporations who knowingly made preferential transfers and imposed a duty to account upon the transferees who knowingly accepted them. Cahill's Cons. L. N.Y. 1930, c. 60, § 15. The trustee in bankruptcy appealed from a decree dismissing his petition for an accounting by the preferred creditors. *Held*, decree reversed and cause remanded. (1) "Illegal" does more than identify transfers for which the directors are liable; "*ex proprio vigore*," it makes transfers of New York property invalid. (2) Even though the conveyance of *foreign* property was valid under the law of the situs, the acceptance of the deeds in New York constituted a wrong for which the court could, at the option of the trustee, order a reconveyance or assess damages. *Irving Trust Co. v. Maryland Casualty Co.*, 83 F. (2d) 168 (C.C.A. 2d 1936), *cert. denied*, Sup. Ct. Serv. 809, no. 251 (Oct. 12, 1936).

To invalidate the transfer by a foreign corporation of domestic property, the court construed "illegal" as not merely identifying the transaction for which the directors would be liable but also as making such transactions invalid. Since under this construction the transfers of New York property could be set aside, it was unnecessary to consider whether the acceptance of the conveyance of domestic property made the transferee personally liable. Although this result was based on a rather tenuous construction of the statute, it was in accord with the legislative intention to attach similar consequences to preferential transfers by foreign and domestic corporations. See *Vanderpoel v. Gorman*, 140 N.Y. 563, 35 N.E. 932 (1894).

The imposition of personal liability for the acceptance of the deed to the foreign property was rested on an even slenderer basis. Admittedly, the validity of the transfer of foreign realty was governed by the law of the situs, under which it was valid. See 2 Beale, *Conflict of Laws* 939 (1935). Hence the adjective "illegal," *ex proprio vigore*, could not invalidate the conveyance as such. Since section 114 does not by its terms provide for personal liability on the part of the preferred creditor, the imposition of such liability can be based upon the statute only by assuming that the legislative declaration (as construed by the instant court) that preferential transfers by foreign corporations are voidable manifested an intention to impose personal liability upon transferees with knowledge. This interpretation of the statute gains some support from the language and result of early New York decisions construing the effect of section 15. See *McQueen v. New*, 33 N.Y.S. 395, 802 (1895); 45 App. Div. 579, 61 N.Y.S. 464 (1899); *Pennsylvania v. Pedrick*, 222 Fed. 75 (D.C. N.Y. 1915). But it runs counter to the view that a fraudulent conveyance affects property alone and is not a tort. See 2 Beale, *Conflict of Laws* 954, n. 3 (1935); *Purdom v. Pavey*, 26 Can. 412 (1896) (recovery denied against a transferee with notice when the conveyance, although valid under the law of the situs which governed, would have been fraudulent under the law of the forum—the place where the conveyance was made). If a conveyance that would be fraudulent under the law of the place of the transfer, is not a tort on the part of the transferee with knowledge, it would seem to follow *a fortiori* that a preference that would be void-

able if the property were present at the place of transfer is not a tort on the part of the transferee with knowledge. However, in view of the uncrystallized notions concerning the nature of fraudulent conveyances and voidable preferences, a court convinced that a statutory or common law rule rendering preferential or fraudulent conveyances voidable is expressive of a strong desire for creditor equality might well impose personal liability upon transferees with knowledge. Such reasoning would not apply to preferences voidable under the Bankruptcy Act but not under state laws since the imposition of tort liability would, in effect, repeal the four month limitation.

It is noteworthy that the court in the instant case might have imposed personal liability upon the preferred creditors by a slightly different use of the statute. Section 114 expressly imposes personal liability upon directors for "illegal" transfers made when the corporation is insolvent. If "illegal" were construed as being merely descriptive, then the directors would clearly be liable for preferential transfers of foreign land even though valid at the situs. Consequently, personal liability could be imposed on transferees with knowledge as participants in wrongful conduct. See Harper, Torts § 302 (1933).

Once the common law or statutory rule proscribing fraudulent conveyances or preferential transfers is construed as imposing personal liability upon transferees of foreign property, the problem raised is akin to that of *Lord Cranston v. Johnson*, 3 Ves. 170 (1796). In that case a reconveyance was ordered against a creditor who obtained title to foreign land at his own execution sale, after assuring his debtor by conduct in the forum that he would not satisfy the debt by proceeding against the property. Although the court in the *Cranston* case did not articulate its rationale, it must have proceeded on the assumption that a conveyance may have both a property and a tort aspect; and that, although the law of the situs determines the property consequences of a conveyance, the law of the place of the transfer determines its tort consequences. See 2 Beale, Conflict of Laws 954 ff (1935). It is arguable that the *Cranston* case is distinguishable from the instant case in that the defendant's misrepresentations constituted wrongful conduct separable from the conveyance. However, since it is the conveyance which causes damage to the creditors and since the forum is primarily concerned with equitable distribution for resident creditors, this difference is not significant. By holding that a fraudulent or preferred transferee of foreign property is a tortfeasor under the law of the place where the conveyance was made and by applying the doctrine of the *Cranston* case, a court may limit the *lex situs* doctrine and may prevent the accidental fact of the location of property from determining whether or not there is redress for transactions admittedly contrary to the law of the place where they were consummated.

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Constitutional Law—War Powers of Congress—Withholding of Seized Alien Enemy Property—[Federal].—Property of plaintiff's predecessor was seized during the World War by the United States as alien enemy property and placed in trust with the Alien Property Custodian. Congress, after termination of the war, authorized the return of such property; whereupon the Custodian determined that the plaintiff was entitled to it. Subsequently, and while the property was tied up by attachment proceedings later dismissed, Congress passed a resolution suspending its former return authorization until German debts had been paid to the United States. In a suit to compel conveyance *held*, for the plaintiff. Confiscation of the property had never been intended by