

guage is to be understood in its ordinary and popular sense, the conclusion is irresistible that the sale, transfer, or conveyance of the property insured renders the policy void, not merely as to the property alienated, but void as to the whole property insured. Another rule of interpretation is, that the terms of a contract are to be understood so as to have an actual and legal operation, and the construction is to be such that the whole instrument or contract and every part of it may take effect, if it be possible consistently with the rules of law and the intention of the parties. The application of this rule of construction leads to the same result. If the stipulation in the policy relating to the alienation of the property insured is to be limited and made applicable only to the property alienated, it is meaningless and superfluous. The contract of insurance is a contract of indemnity to the person and not to the thing insured. It does not run with the subject-matter of insurance, and pass as an incident by any assignment or conveyance of it; and therefore a sale, transfer, or conveyance of any part of the property insured renders the policy void as to the property sold or conveyed without any stipulation in the policy prohibiting alienation. To give any legal effect to the conditions in the policy before us relating to the sale, transfer, or conveyance of the property, it must be construed and understood to mean what the language imports, that a sale, transfer, or conveyance of the property renders the policy void.

*Judgment for the defendant.*

STANLEY, J., did not sit: BLODGETT, J., dissented on the last point: the others concurred.

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MERRILL & a. v. JORDAN & a.

An adjudication of bankruptcy against a mortgagor does not divest a state court of jurisdiction of an action against the bankrupt and his assignee to foreclose the mortgage.

In such action the assignee is a necessary party defendant, in order to extinguish the equity of redemption.

WRIT OF ENTRY, for land in Columbia, on a mortgage from the defendants, Jordan and wife, to one Parkhurst, and by him assigned to the plaintiffs. Plea in abatement by the other defendant, Covill, as assignee in bankruptcy of Jordan, alleging that as such assignee he is an officer of the U. S. Court for the District of New Hampshire; that that court has, and this court has not, jurisdiction of the cause or of the defendants; and that he is made a

party to the action solely because he is assignee. The plaintiffs demurred.

*Shurtleff and Ray, Drew & Jordan*, for the plaintiffs.

*Fletcher and Parsons*, for the defendants.

BLODGETT, J. The plaintiffs' mortgage is apparently a valid lien upon the land embraced in it, both under our laws and the provisions of the bankrupt act, and therefore, in our view, the bankruptcy court cannot interfere with or control the exercise of jurisdiction of an action of foreclosure by this court. *Peck v. Jenness*, 16 N. H. 516—*S. C.*, 7 How. 612. But however this may be, it must be held in cases like the present, where no action in relation to the property has been taken by the assignee or by the creditors in the bankruptcy court, or by the court itself, that state courts have jurisdiction to make the lien available; and such, we think, are the authorities generally. *Eyster v. Gaff*, 91 U. S. 521, 525; *Re Moller*, 14 Blatchf. 207; *Cole v. Duncan*, 58 Ill. 176; *Bentley v. Wells*, 61 Ill. 59; *Brown v. Gibbons*, 37 Iowa 654; *Goodrich v. Wilson*, 119 Mass. 429; *Hatcher v. Jones*, 53 Ga. 208; *Reed v. Bullington*, 49 Miss. 223; *Whitridge v. Taylor*, 66 N. C. 273; *Burlingame v. Parce*, 12 Hun 144.

Nor is Covill improperly made a defendant, because otherwise the foreclosure would be of no effect as to him, and the equity of redemption vested in him by the assignment would not be extinguished.

*Demurrer sustained.*

ALLEN, J., did not sit: the others concurred.

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JOHNSON & a. v. FARR.

An attachment of personal property constitutes of itself a conversion; and therefore the owner of chattels attached as the property of another may maintain trover against the officer, though there was no manual taking or removal.

TROVER, for a lot of last-blocks. Facts found by a referee. The defendant attached the blocks as the property of one Howe, August 21, 1878, on a writ in favor of A. T. & O. F. Barron against said Howe, which is made a part of the case. Judgment was rendered in that action November 14, 1879, and execution issued thereon, but was never put into the hands of the defendant, or any other sheriff, for levy.