

meddling with, asportation, or detention of another's goods that amounts to a conversion. Acts which of themselves imply an assertion of title to, or a right of dominion over, another's property, as a sale, letting, or destruction of it, may be a conversion, although the defendant has honestly mistaken his rights; but acts which do not of themselves imply such assertion of title or right of dominion will not sustain an action of trover unless they are done with the intention of depriving the owner permanently or temporarily of the property. *Spooner v. Manchester*, 133 Mass. 273; *Fouldes v. Willoughby*, 8 M. & W. 540. Nonfeasance, acts of negligence, or the breach of a contract, standing alone, will not in general effect a conversion. *Bowlin v. Nye*, 10 Cush. 416; *Heald v. Carey*, 11 C. B. 977; *Wentworth v. McDuffie*, 48 N. H. 402; *Eaton v. Hill*, 50 N. H. 235; *Woodman v. Hubbard*, 25 N. H. 67.

The only misconduct of the defendant here complained of is his delay, or non-action. This of itself was not inconsistent with a full recognition by the defendant of the plaintiff's title and right of dominion, and it is accompanied with no evidence tending to show an intention on the part of the defendant to deprive the plaintiff of his title or dominion, either permanently or temporarily. It was at most a mere breach of the contract. Standing alone, it no more tends to prove a purpose to deprive the plaintiff of his property, than would a neglect to feed the horse as he had agreed, or a refusal to pay the contract price for its use. The delay cannot be declared, as matter of law, to be even a breach of the contract. The language of the agreement must be so construed as to effectuate the understanding and intention of the parties. They did not understand that stopping to water or feed the horse, to mend the broken wagon or harness, or a stopping required by reasonable necessity for any purpose, would be a violation of the contract. Whether a delay of half an hour, awaiting the arrival of a friend, was under all the circumstances reasonably necessary, is a question of fact.

Upon the evidence reported, the jury could not properly find a conversion, and there must be

*Judgment for the defendant.*

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

WATKINS v. ARMS.

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64	99
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A conveyance of property absolute in terms, but in fact a mere security, is fraudulent and void as against the grantor's creditors, although no fraud was intended.

BILL IN EQUITY, to annul a deed of land and a transfer of bank stock.

March 2, 1885, the plaintiff, a citizen of this state, attached the land and stock, and, subsequently having obtained a judgment, levied upon them as the property of A. S. Watkins. March 9, 1885, Watkins filed his petition in the insolvency court of Windham county, Vermont, was by that court adjudged an insolvent debtor March 21, 1885, and on the same day all his estate was conveyed to his assignee by deed, which, by the law of that state, relates to the date of the petition. The defendant and Watkins are citizens of Vermont.

October 17, 1884, Watkins being then insolvent, and indebted to the defendant in the sum of \$2,838.72, gave to the defendant his note for \$3,775.49 and a mortgage to secure its payment. The mortgage covered certain lands belonging to his wife, who joined with him in the mortgage. February 24, 1885, the defendant, at the wife's request, released her property from the mortgage, and in place of and as a substitute for it, Watkins, with no intent or purpose to hinder or delay his creditors, gave the defendant an absolute deed of the land, and a like transfer of the bank stock in question, to be held by him as security for the mortgage debt.

*B. Lovell and Batchelder & Faulkner*, for the plaintiff.

*C. B. Eddy* (of Vermont), for the defendant.

CARPENTER, J. The plaintiff's rights are not affected by the insolvency proceedings in Vermont. *Perley v. Mason*, 64 N. H. 6; *Carbee v. Mason*, 64 N. H. 10, and cases cited.

The conveyance of the land and bank stock to the defendant was absolute in terms, but was in fact a mere security. Watkins, upon payment of the mortgage debt was entitled to a reconveyance. This is a secret trust, and fraudulent in law, though no fraud was in fact intended. *Stratton v. Putney*, 63 N. H. 577, and cases cited.

*Decree for the plaintiff.*

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

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#### WINCHESTER v. CHESHIRE COUNTY.

An order by the county commissioners, under Gen. Laws, c. 25, s. 6, for the removal of a county pauper to the county almshouse, which is not complied with because of the pauper's refusal to be removed, does not discharge the county from liability to the town in which the pauper resides for support afterwards furnished him upon a new application, a new necessity having arisen.