

## TAYLOR v. CRAWFORD.

4-2944.

Opinion delivered April 24, 1933.

1. BANKS AND BANKING—PREFERENCE ON INSOLVENCY.—Where a bank, with knowledge of landlord's liens, sold tenant's crops and collected and held the identical proceeds thereof, upon the bank's insolvency the landlord's liens constituted a preferred claim under Acts 1929, No. 107, § 1 (6).
2. BANKS AND BANKING—PREFERRED CLAIMS.—Landlords are entitled in equity to enforce their liens on the proceeds of tenants' crops in the hands of an insolvent bank, which directed the sale of such crops and collected and retained the proceeds thereof.
3. LANDLORD AND TENANT—LIEN—LIMITATION.—A landlord's lien, not filed within six months after the rent became due, is barred by Crawford & Moses' Dig., § 6889.

Appeal from Jefferson Chancery Court; *Harvey R. Lucas*, Chancellor; affirmed.

## STATEMENT BY THE COURT.

This appeal is from a decree adjudging certain claims of landlord's liens entitled to preferred payment out of the assets of a failed bank in the hands of the Bank Commissioner for liquidation.

In the year 1930 the Merchants' & Planters' Bank & Trust Company of Pine Bluff made an agreement with W. E. Massey, of Gould, Arkansas, to furnish funds out of which to make and gather a cotton crop on lands controlled and farmed by W. E. Massey. Massey executed a mortgage to the bank on all of the cotton grown by him on various tracts of land near Gould. The bank was taken over by the Bank Commissioner on November 22, 1930, as insolvent. At the time the bank began to furnish money to him, it was advised and proceeded with full knowledge of the fact that Mrs. J. W. Crawford, William Zachrich, B. F. Hatley and C. H. Holthoff were owners of lands rented to W. E. Massey and his tenants for the year 1930, and that said parties did not waive their landlord's lien on the crops for rent. During the fall of 1930, and before the crop was harvested, the Merchants' & Planters' Bank & Trust Company, through its president, J. W. Jones, and cashier, Jim McClelland, instructed W. E. Massey to gather the cotton on the rented lands, to pay the expenses of gathering and ginning, to sell the cotton and attach drafts for the sale price to bills of lading and send them to the Merchants' & Planters' Bank & Trust Company for collection and credit to Massey's account. The bank had supervision over the making, gathering and sale of the crops, and the cotton was gathered and sold under its direction. Massey was authorized to draw checks payable to the landlords for the amounts of rent due each and his checks so drawn were honored by the bank under its agreement to collect the drafts attached to bills of lading, and in that manner remitted to the landlords by Massey's checks the rent as the cotton was sold.

All of the proceeds from the sale of the cotton mentioned and described in the several interventions were received by the Merchants' & Planters' Bank, and a portion of the cotton was sold prior to the time the bank failed, and the remainder of it sold afterwards.

The Bank Commissioner denied any obligations for rent; denied any knowledge of any official of the bank that the cotton received or the proceeds therefrom was subject to the payment of rent; denied that any liability should be adjudged as preferred claims; and pleaded the statute of limitations the six months' statute as against the landlord lien in the B. F. Hatley claim.

The several interventions alleged the renting of certain lands to W. E. Massey for the year 1930, the amount of rent agreed to be paid, the amount of cotton produced and harvested from the lands and the value of it, which was delivered to the Merchants' & Planters' Bank before it closed its doors; that the landlord's lien was not waived by intervener, and the bank was notified after it had closed and demand made for the rent due; and prayed that it be adjudged a prior claim.

The liquidation of the bank was begun November 22, 1930, and the Bank Commissioner filed this case and inventory on November 29, 1930.

The interventions were consolidated for trial, and the chancellor found the bank had charge of interveners' cotton with the full knowledge of their prior liens, that it collected and received all funds from the sale of the cotton, and that said bank was in possession of the proceeds of the sale of the cotton at the time it became insolvent and ceased to be a going concern, and decided in favor of the interveners for the full amount claimed and adjudged same to be a prior and preferred claim, from which decree this appeal is prosecuted.

*Bridges, McGaughey & Bridges*, for appellant.

*E. W. Brockman*, for appellee.

KIRBY, J., (after stating the facts). It is insisted that the court erred in holding the claims of interveners for liens to be prior claims.

The testimony is virtually undisputed that W. E. Massey and the Merchants' & Planters' Bank & Trust Company furnished the tenants to work the lands rented from the interveners in 1930, and that the interveners did not waive their landlord's liens for rent. That Massey executed a statement in writing, which was delivered to and accepted by the bank, showing the amount of

rents due each respective intervener for rent upon his lands for that year, and that the landlord's lien had not been waived thereon; that the bank, acting with Massey in pursuance of its oral agreement and with full knowledge of the interveners' prior claims, furnished the money with which to make and gather the cotton, and sold the crop off the interveners' lands as alleged and received the proceeds of the sale thereof, agreeing to pay the rents out of such proceeds when collected; that the proceeds of the sales had not been remitted when the bank was declared insolvent, and said proceeds have had a distinctive identity in the hands of said bank, have actually increased its assets and did not result from shifting its liability from one of its creditors to another, and that the interveners at the time were not indebted to the bank.

No error was committed in holding the claims of interveners for landlord's liens for rent as prior claims.

Section 1, act 107 of 1927, in describing the classes of preferred creditors on a bank's insolvency, in part, reads as follows:

"(6) The owner of the proceeds of a collection made by said bank and not remitted by it, or of which remittance has not been paid, when such collection was made otherwise than by honoring a check or other order upon said bank or by a charge against the account of the depositor of said bank, and the said collection has had a distinctive identity in the hands of said bank, has actually increased its cash assets, and has not resulted in merely shifting its liability upon its book from one of its creditors to another or new creditor."

When the bank undertook to and directed the sale and disposition of the cotton grown on interveners' lands and collected the drafts drawn on the purchasers for the sale price and to pay therefrom the rents due and afterwards became insolvent and was taken over by the Bank Commissioner, all money coming into its hands as collections on the rents constituted preferred claims in favor of the landlords. *Home Life Ins. Co. v. Taylor*, 186 Ark. 768; *Taylor v. Corning Bank & Trust Co.*, 183 Ark. 757, 38 S. W. (2d) 557.

It is true the appellees were not the owners of the cotton which the bank sold, but they had a lien thereon of which the bank had knowledge, and the appellees pursued the proper remedy to impress their liens on the proceeds of the crops raised on their lands which equity will fix on the proceeds in the hands of the bank. *Judge v. Curtis*, 72 Ark. 132, 78 S. W. 746; and *Murphy v. Myar*, 95 Ark. 32, 128 S. W. 359. In the latter case it was said: "The appellee had a lien on this cotton for the payment of the rent of the land; and, after appellants had, with notice of his rights, purchased the cotton from his tenant, and by sale had wrongfully converted it, the appellee had a right to fix his lien on the proceeds thereof in equity, and in the court to obtain judgment against appellant therefor."

Appellees did not seek to enforce a lien against the property of the bank, but only to fix their statutory lien on the proceeds of the cotton raised on their lands, which cotton the bank took charge of and sold with notice of their lien.

Massey was operating under orders from the bank in making the sales of the cotton and having the collections made by the bank, and, while they were deposited in his account there in his name, he was restricted in his right to check on such account by stipulation that the checks would not be honored except for the payment of the rents on the lands due for that year.

It is true the appellees were not depositors in the bank, but it had full knowledge of the appellees' first lien, undertook with Massey to sell the crops, the bank being allowed to make the collections, and necessarily increased its assets to the amount of appellees' rents, and afterwards closed its doors, ceasing to function, with the amount of appellees' rents still in its possession. The bank recognized that the interveners had a prior claim for the payment of their rents due out of the amounts collected for the cotton sold, upon which they had a lien for payment of the rents, and honored all the checks drawn by Massey in payment of such rents out of such account and proceeds, having agreed to do so before the money was collected by them and placed in the account to Massey's credit.

The bank knew that the proceeds of the sale of the cotton by it and credited to the account of Massey was subject to the payment of his check on such account for the rents of the lands or farms cultivated by him, as the bank also understood to be the case when the credit of the collections was made. The collections from the sale of the cotton had a distinctive identity in the hands of the bank, actually increased its cash assets, not resulting from merely shifting its liability upon its books from one of its creditors to another or to a new creditor, and, under the provisions of the statute and the circumstances of this case, the claims of the interveners, the claim of B. F. Hatley excepted as already stated, were entitled to priority of payment and the chancellor did not err in so holding. The decree is accordingly affirmed.

The B. F. Hatley claim, in the sum of \$350, allowed by the chancellor in the sum of \$199.07 as a prior claim, was barred by the six months' statute of limitations. The rent note was due November 15, 1930, and the landlord's lien only continued for six months after the rent became due and payable, and, the claim not being filed until March 12, 1932, the lien was long barred and the claim not entitled to payment, and the court erred in not so holding. Section 6889, Crawford & Moses' Digest. *Cocke v. Clausen*, 67 Ark. 455, 55 S. W. 846.

The decree as to the Hatley claim is reversed, and said claim dismissed.