Comegys and Pettit Vs. Vasse

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Appellant : Comegys and Pettit

Respondent : Vasse

Judgement :

Comegys & Pettit v. Vasse - 26 U.S. 193 (1828)
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Comegys & Pettit v. Vasse

26 U.S. (1 Pet.) 193

ERROR TO THE CIRCUIT

COURT OF PENNSYLVANIA

SYLLABUS

The object of the treaty with Spain which ceded Florida to the United

states, dated 2 May, 1819, was to invest the commissioners with full power and authority to receive, examine, and decide the *amount* and *validity* of asserted claims upon Spain for damages and injuries. Their decision, within the scope of this authority, is conclusive and final, and is not reexaminable. The parties must abide by it as the decree of a competent tribunal of exclusive jurisdiction. A rejected claim cannot be brought again under review in any judicial tribunal. But it does not naturally follow that this authority extends to adjust all conflicting rights of different citizens to the fund so awarded. The commissioners are to look to the original claim for damages and injuries against Spain itself, and it is wholly immaterial who is the legal or equitable owner of the claim, provided he is an American citizen.

After the validity and amount of the claim has been ascertained by the award of the commissioners, the rights, of the claimant to the fund which has passed into his hands and those of others are left to the ordinary course of judicial proceedings in the established courts of justice.

In general it may be affirmed that mere personal torts, which die with the party and do not survive to his personal representatives, are incapable of passing by assignment, and that vested rights, *ad rem* and *in re,* possibilities, coupled with an interest and claim growing out of and adhering to property, may pass by assignment.

The law gives to the act of abandonment to underwriters, when accepted, all the effects which the most accurately drawn assignment would accomplish. The underwriter then stands in the place of the insured, and becomes legally entitled to all that can be recovered from the destruction.

It is clear that the right to compensation for damages and injuries to which citizens of the United States were entitled and which under the treaty with Spain were to be the subjects of compensation passed by abandonment to the underwriters upon property which had been seized or captured.

The right to indemnify for an unjust capture on the sovereign, whether remediable in his own courts or by his own extraordinary interposition or grants upon private petition by cession to the account of the ultimate sufferer, and is afterwards assignable to the person to whom it had been ceded.

It is not universally, though it may be ordinarily, the test of a right that it may be enforced in a court of justice. Claims and debts due by a sovereign are not commonly capable of being so enforced. It does not follow that because an unjust sentence cannot be reversed, that the party injured has lost all right to justice or all claim upon principles of public law to remuneration.

The treaty with Spain recognized an existing right in the aggrieved parties to compensation, and did not in the most remote degree turn upon the notion of donation or gratuity. It was demanded by our government as matter of right such as was granted by Spain.

The right to compensation from Spain. held under abandonment made to

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underwriters and accepted by them, for damages and injuries and which were to be satisfied under the treaty by the United States passed to the assignees of the bankrupt, who held such rights by the provisions of the bankrupt law of the United States passed April 4, 1800.

The defendant in error instituted his suit against the plaintiffs here, who were the surviving assignees under a commission of bankruptcy issued against him under the Act of Congress of the United States for establishing a uniform system of bankruptcy throughout the United States, passed April 5, 1800.

In the circuit court, a judgment was entered in favor of the defendant in error, the parties having agreed upon a case which, if required by either, might be turned into a special verdict, subject to the opinion of the circuit court:

The case was that Ambrose Vasse, previously to the year 1802, was an underwriter on various vessels and cargoes, the property of citizens of the United

States, which were captured and carried into ports of Spain and her dependencies, and abandonments were made thereof to the said Vasse by the owners, and he paid the losses arising therefrom prior to the year 1802.

The said Ambrose Vasse became embarrassed in his affairs, and his creditors proceeded against him as a bankrupt under the Act of Congress of the United States for establishing an uniform system of bankruptcy throughout the United States. An assignment was made accordingly to Jacob Shoemaker, who is since deceased, and the defendants, Cornelius Comegys and Andrew Pettit, who proceeded to take upon themselves the duties of assignees and have continued to discharge the same. The certificate of discharge of the said Ambrose Vasse bears date 28 May, 1802.

In the year 1824, the sum of $8,846.14 was received by the defendants from the Treasury of the United States, being the sum awarded by the commissioners sitting at Washington under the Treaty of Amity, Settlement, and Limits between the United States of America and his Catholic Majesty the King of Spain dated 22 February, 1819, on account of the captures and losses aforesaid.

On 9 December, 1823, the said Ambrose Vasse filed a bill in equity in the Circuit Court of the District of Columbia claiming the sum awarded by the commissioners and a settlement of the accounts of the assignees. This bill was intended to operate upon the funds which were expected to come into the hands of the agent of the assignees, prosecuting for them the claim before the commissioners, but it was not

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proceeded on, the said funds having been received by another person.

The said Ambrose Vasse made a return of his effects to the commissioners of bankruptcy. The claim upon Spain for spoliations was not in the schedule, but claims upon France and Great Britain were.

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MR. JUSTICE STORY delivered the opinion of the Court.

This was an action of assumpsit brought by Ambrose Vasse in the Circuit Court for the District of Pennsylvania to recover from the plaintiffs in error (who were defendants in the court below) a certain sum of money received by them under the following circumstances:

Previous to the year 1802, Vasse was an underwriter on various vessels and cargoes, the property of citizens of the United States, which were captured and carried into the ports of Spain and her dependencies, and abandonments were made thereof to Vasse by the owners, and he paid the losses arising therefrom prior to the year 1802. Vasse became embarrassed in his affairs, and his creditors proceeded against him as a bankrupt under the Act of Congress of 4 April, 1800, ch. 19. An assignment was made accordingly to Jacob Shoemaker (who is deceased), and the defendants, Comegys and Pettit, who proceeded to take upon themselves the duties of assignees and have ever since continued to perform the same. Vasse was discharged under the commission, and his certificate of discharge bears date 28 May, 1802. In the year 1824, the sum of $8,846.14 was received by the defendants from the Treasury of the United States, being the sum awarded by the commissioners sitting at Washington

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under the treaty will Spain which ceded Florida to the United States, dated 22 February, 1819, on account of the captures and losses aforesaid. On 9 December, 1823, Vasse filed a bill in equity in the Circuit Court of the District of Columbia; which is in the case, upon which it seems no final proceedings were had on the merits. Under the commission of bankruptcy, Vasse made a return of his effects to the commissioner, which is in the case.

Upon these facts, a general verdict was found for the plaintiff Vasse for the sum of $8,846.14, subject to the opinion of the court, with liberty for either party to turn the same into a special verdict, and the circuit court gave judgment upon the facts in favor of the original defendant. The present is a writ of error brought for the

purpose of ascertaining the correctness of that judgment.

Three questions have been argued at the bar.

1. Whether the award of the commissioners under the treaty with Spain directing the money to be paid to the defendants as assignees of Vasse (which is assumed to be the true state of the fact) is conclusive upon the rights of Vasse, so as to prevent his recovery in the present action.

2. If not, whether the abandonment of the vessels and cargoes to him as underwriter, by the owners and his payment of the losses entitled him to the compensation awarded, independent of his bankruptcy.

3. If so, then whether his right and title to the compensation passed by the assignment of the commissioners of bankruptcy to the defendants as his assignees by the true intent and terms of the Bankrupt act of 1800, ch. 19.

1. As to the first point:

1. The treaty with Spain of 22 February, 1819, was ratified on 13 February, 1821, by the government of the United States. In the 9th article it provides that the high contracting parties

"reciprocally renounce all claims for damages or injuries, which they themselves, as well as their respective citizens and subjects may have suffered, until the time of signing this treaty,"

and then proceeds to enumerate in separate clauses the injuries to which the renunciation extends.

The 11th article provides that the United States, exonerating Spain from all demands in future on account of the claims of their citizens to which the renunciations herein contained extend, and considering them entirely cancelled, undertakes to make satisfaction for the same to an amount not exceeding $5,000,000. To ascertain the full amount and validity of these claims, a commission, to consist of three commissioners, &c.;, shall be appointed, &c.;, and

within the space of three years from the time of their first meeting, shall *"receive, examine, and decide upon the amount and validity of all claims*

included within the descriptions above mentioned." The remaining part of the article is not material to be mentioned.

It has been justly remarked in the opinion of the learned judge who decided this cause in the circuit court that it does not appear from the statement of facts who were the persons who presented or litigated the claim before the Board of commissioners, nor whether Vasse himself was before the board, nor who were the parties to whom or for whose benefit the award was made. We do not think that the fact is material upon the view which we take of the authority and duties of the commissioners. The object of the treaty was to invest the commissioners with full power and authority to receive, examine, and decide upon the *amount* and *validity* of the asserted claims upon Spain for damages and injuries. Their decision, within the scope of this authority, is conclusive and final. If they pronounce the claim valid or invalid, if they ascertain the amount, their award in the premises is not reexaminable. The parties must abide by it as the decree of a competent tribunal of exclusive jurisdiction. A rejected claim cannot be brought again under review in any judicial tribunal; an amount once fixed is a final ascertainment of the damages or injury.

This is the obvious purport of the language of the treaty. But it does not necessarily or naturally follow that this authority, so delegated, includes the authority to adjust all conflicting rights of different citizens to the fund so awarded. The commissioners are to look to the original claim for damages and injuries against Spain itself, and it is wholly immaterial for this purpose upon whom it may in the intermediate time have devolved or who was the original legal, as contradistinguished from the equitable owner, provided he was an American citizen. If the claim was to be allowed as against Spain, the present ownership of it, whether in assignees or personal representatives or *bona fide* purchasers, was not necessary to be ascertained in order to exercise their functions in the fullest

manner. Nor could they be presumed to possess the means of exercising such a broader jurisdiction, with due justice and effect. They had no authority to compel parties asserting conflicting interests to appear and litigate before them, nor to summon witnesses to establish or repel such interests, and under such circumstances it cannot be presumed that it was the intention of either government to clothe them with an authority so summary and conclusive, with means so little adapted to the attainment of the ends of a substantial justice. The validity and amount of the claim being once ascertained by their award, the fund might well be permitted to pass into the hands of any claimant; and his own rights, as well as those of all others, who asserted a title to the fund, be left to the ordinary course

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of judicial proceedings in the established courts, where redress could be administered according to the nature and extent of the rights or equities of all the parties. We are therefore of opinion that the award of the commissioners, in whatever form made, presents no bar to the action if the plaintiff is entitled to the money awarded by the commissioners. The case of *Campbell v. Mullett,* 2 Swanston 551, is distinguishable. The claim in that case had been laid before the commissioners and rejected by them on the ground that the party was alien enemy, and if so he certainly did not come into the purview of the treaty. It was not pretended that the party had any title to the indemnity unless it could be deemed partnership property, and as a partner he was entitled to share in it. The court considered that it was not partnership property in which he had a title; that his claim to any portion of it had been rejected upon the ground that such claim was not within the treaty; and the indemnity had been granted to the other partners for their shares only of the joint property, and they took no more than their own shares. The court then proceeded upon the ground that there neither was an original nor a derivative title to the indemnity in the party now seeking to set it up. If an assignment had been shown from them to him of their own interest in the claim or award before or after it was made, the case might have admitted of a very different consideration. Whatever therefore might be the authority of that case upon general principles, upon which it is unnecessary to pass any opinion, it is

inapplicable to the present.

2. The next question is not noticed in the opinion of the circuit court, turns upon the nature and effect of an abandonment for a total loss to the underwriters. Much argument has been employed and many authorities introduced to prove what rights and interests, possibilities and expectancies, may or may not pass by assignment; we do not think it necessary to review these authorities or the principles upon which they depend upon the present occasion. In general it may be affirmed that mere personal torts, which die with the party and do not survive to his personal representative, are not capable of passing by assignment, and that vested rights *ad rem* and *in re,* possibilities coupled with an interest, and claims growing out of, and adhering to property, may pass by assignment. But the material consideration here is whether upon the principles of the law merchant, the right, title, interest or possibility (call it which you may) to the indemnity awarded in this case did not pass by the abandonment to Vasse.

We do not think that upon an examination of the doctrines of insurance, there is any difficulty in this part of the case. It

does not appear on the record whether there was, in this instance, any formal instrument of abandonment or not, nor is it material, for the law gives to the act of abandonment, when accepted, all the effects, which the most accurately drawn assignment would accomplish. By the act of abandonment, the insured renounces and yields up to the underwriter all his right, title, and claims to what may be saved, and leaves it to him to make the most of it for his own benefit. The underwriter then stands in the place of the insured and becomes legally entitled to all that can be rescued from destruction. This is the language of the elementary writers, and is fully borne out by Mr. Marshall and Mr. Park in their treatises on insurance. Mar. on Ins. B. 1 *a* 14. Park on Ins., ch. 9, 228; 279.

"Where [says Mr. Marshall], as in case of capture, the thing insured and every part of it is completely gone out of the power of the insured, it is just and proper that he

should recover at once, as for a total loss, and leave the *spes recuperandi* to the insurer, who will have the benefit of a recapture or of any other accident by which the thing may be recovered."

Mr. Park uses equally strong language -- he says

"The insured has a right to call upon the underwriter for a total loss, and of course to abandon, as soon as he hears of such a calamity having happened, his claim to an indemnity not being at all suspended by the chance of a future recovery of part of the property lost, because by the abandonment that chance devolves upon the underwriters."

It is very clear that neither of these learned writers meant to confine these remarks to cases where the specific property itself or its proceeds were restored, for the whole current of their reasoning in the context goes to show that whatever may be afterwards recovered or received, whether in the course of judicial proceedings or otherwise, as a compensation for the loss, belongs to the underwriters, and for this purpose they refer to the case of *Randall v. Cochran,* 1 Vez. 98, before Lord Hardwicke, where this very point was adjudged. In that case, the King had granted letters of reprisal against the Spaniards, for the benefit of his subjects in consideration of the losses which they had sustained by unjust captures, and he appointed commissioners to distribute the produce of these reprisals among the sufferers, and the commissioners would not suffer the underwriters, but only the owners, to make claim for the losses, although the owners were already satisfied for their loss by the underwriters. Lord Hardwicke decreed that the owner should account for the same to the underwriter, and said

"The person who originally sustained the loss was the owner, but after satisfaction made to him, the insurer. No doubt but from that time, as to the goods themselves, if restored in specie or compensation made for them, the insured stood as a trustee for

the insurer in proportion to what he paid, although the commissioners did right to avoid being entangled in accounts and in adjusting the proportion between them. Their commission was limited in time; they saw who was owner; nor was it material to whom he assigned his interest, as it was in effect after satisfaction made."

This case reflects no inconsiderable light upon the point already discussed as to the conclusiveness of the award of the commissioners. But it is decisive that the assignment by abandonment is competent not only to pass the property itself or its proceeds if restored, after an unjust capture, but also any compensation awarded by way of indemnity therefor. The case before Lord Hardwicke was the stronger because the indemnity was awarded to the party by his own sovereign, and not by the sovereign of the captors. Mr. Marshall and Mr. Park manifestly contemplate the case as establishing the principle that any indemnity, however arising, is a trust for the underwriters after they have paid the loss. Park on Ins., ch. 8, p. 229; Mar. on Ins., B. 1, ch. 14, § 4.

The case of *Gracie v. New-York Insurance Company,* 8 Johns. 237, recognizes the same principle in its full extent. That was a case of abandonment after a capture and where there had been a final condemnation, not only by the courts in France, but an express confirmation of the condemnation by the sovereign himself. One question was whether the jury were at liberty to deduct from the total loss, the value of the *spes recuperandi.* The court held that they were not. Mr. Chief Justice Kent, in delivering the opinion of the court, said

"If France should at any future period agree to and actually make compensation for the capture and condemnation in question, the government of the United States, to whom the compensation would in the first instance be payable, would become trustee for the party having the equitable title to the reimbursement, and this would clearly be the defendants [the underwriters] if they should pay the amount"

&c.; The case of *Watson v. Insurance Company of North America,* 1 Binn. 47, proceeds upon the same principles. It admits that the *spes recuperandi* passes

by an abandonment to the underwriter, and the question there was whether its value when not abandoned was to be deducted from the total loss. We consider it, then, clear upon authority that the right to the compensation in this case, was in its nature assignable, and passed by abandonment to Vasse, and upon principle we should arrive at the same conclusion. The right to indemnity for an unjust capture, whether against the captors or the sovereign, whether remediable in his own courts or by his own extraordinary interposition and grants upon private petition or upon public negotiation, is a right attached to the

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ownership of the property itself, and passes by cession to the use of the ultimate sufferer. If so assignable to Vasse, it was equally, in its own nature, capable of assignment to others, and the only remaining inquiry would be whether it had so passed by assignment from him.

The case of *Campbell v. Mullet,* 2 Swanston 551, already adverted to, has been pressed upon the attention of the Court as indicating, certainly not as deciding, a doctrine somewhat different. In that case, the compensation had been awarded by the commissioners under the British treaty of 1794 to American citizens for unjust captures made by British cruisers, and there had been condemnations by the highest appellate courts of prize. One argument was that the compensation so granted was not to be deemed a mere donation to the parties who received it for their own use, but an indemnity. The Master of the Rolls, in answer to this, said:

"It is said that the sums awarded by the commissioners are not matter of bounty or donation. Can they be a matter of right? What is right? That which may be enforced in a court of justice. Had the parties, whose property was condemned by irrevocable sentence, any right? What they obtain after that condemnation is not founded in right, but in policy between the nations, providing compensation to individuals who have lost property by sentences which are thought unjust. The grounds of relief before the commissioners are the want of any redress in any municipal courts. Whatever the individual obtains is not on the ground of right or private property, but of hardship and injustice. Though this therefore is not a case

of pure donation, as of a gift without anything in the nature of a consideration, yet for the purpose of being contrasted with property or right, it is a donation, not a restoration of a former right, but from a new fund, belonging to an independent authority, a grant to the sufferer for what he lost."

Such is the language of the learned judge, and we cannot say that the reasoning is at all satisfactory. It is not universally, though it may ordinarily be one test of right, that it may be enforced in a court of justice. Claims and debts due from a sovereign are not ordinarily capable of being so enforced. Neither the King of Great Britain nor the government of the United States is suable in the ordinary courts of justice for debts due by either. Yet who will doubt that such debts are rights? It does not follow, because an unjust sentence is irreversible, that the party has lost all right to justice, or all claim, upon principles of public law, to remuneration. With reference to mere municipal law he may be without remedy, but with reference to principles of international law, he has a right both to the justice of his own and the foreign sovereign. The

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theory, too, that an indemnification for unjust captures is to be deemed, if not a mere deviation, as in the nature of a donation, as contrasted with right is not admissible. It is reasoning against the clear text of the treaty itself. What says the treaty of 1794, § 7? That where American citizens have sustained losses or damages

"by reason of irregular or illegal captures, or condemnations of their vessels, or other property, under color of authority or commissions from His Majesty, and adequate compensation cannot be obtained by the ordinary course of judicial tribunals, full and complete compensation for the same will be made by the British government to the said complainants."

The very ground of the treaty is that the municipal remedy is inadequate, and that the party has a right to compensation for illegal captures by an appeal to the justice of the government. It was never understood that the case was one to which

the doctrine of donation applied. The right to compensation, in the eye of the treaty, was just as perfect, though the remedy was merely by petition, as the right to compensation for an illegal conversion of property in a municipal court of justice. The case of *Randall v. Cochran,* 1 Vez. 98, stands upon the true ground. It considers the right of indemnity as traveling with the right of property. In that case it might have been said, in answer to the claims of the underwriters, that they had no title, because it was a case of donation by the Crown, out of funds provided by reprisals. So perhaps the commissioners thought, but Lord Hardwicke decided otherwise. There cannot be a doubt that if the party injured had died before or after the treaty was made, and compensation had been subsequently decreed, it would have been assets, and distributable as such in the hands of his executors and administrators. The remarks which have been made upon this case are equally applicable to the provisions for indemnity under the treaty with Spain. It recognized an existing right to compensation in the aggrieved parties, and did not in the most remote degree turn upon the notion of a donation or gratuity. It was demanded by our government as matter of right, and as such it was granted by Spain.

We may now come to the point, which indeed is the only one of any intrinsic difficulty in the cause -- whether the right, so vested in Vasse, to a compensation passed, under the bankruptcy assignment, to his assignees? That this is a question free of doubt will not be affirmed by any person who has thoroughly examined it, or read with care the elaborate opinion of the court below. The true solution of it must be found in a just exposition of the object, intent, and language of the Statute of Bankruptcy of 1800, ch. 19. The act begins by an enumeration of the persons who are liable to be declared

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bankrupts, and among them are "underwriters or marine insurers." This plainly shows the sense of the legislature, that such persons might, by the ordinary course of their business, be reduced to insolvency, and be justly placed within the beneficial operation of such a law. It tends also to the presumption that it might have been the intent of the legislature, that the rights devolved upon them, from the nature of the losses for which they were liable, so far as under any

circumstances they might or could be valuable rights, should be available as a fund for the benefit of their creditors, in case of their bankruptcy. As the legislature meant to exonerate the underwriter from all future liability for his debts, it would seem natural that the claims abandoned to him, which might constitute the whole of his effective estate, should be vested in his assignees for the benefit of his creditors. If he possessed claims by abandonment to the amount of $100,000, which might, by future events, be rendered more or less productive, and which might be (as they have often been) saleable and transferable in the market, such funds, present or expectant, might well be deemed within the legislative policy and fit to pass to the creditors by assignment. It might otherwise happen that large recoveries might ultimately vest in the bankrupt for his own exclusive benefit upon rights preexistent, and vested at the time of his bankruptcy. If such a course of legislation would not be unnatural, let us next see what is the precise language of the statute itself. The fifth section declares that it shall be the duty of the commissioners, after the party has been declared a bankrupt,

"to take into their possession all the estate, *real* and *personal,* of every nature and description, to which the bankrupt may be entitled, either in law or equity, in any manner whatsoever, &c.;, and also the take into their possession, and secure, all deeds and books of accounts, papers and writings, belonging to the bankrupt, and shall cause the same to be safely kept until assignees shall be chosen or appointed."

These words are certainly very general and comprehensive. "All the estate, real and personal, of every nature and description, in law or equity," is broad enough to cover every description of vested right and interest, attached to and growing out of property. Under such words, the whole property of a testator would pass to his devisee. Whatever the administrator would take in case of intestacy would seem capable of passing by such words. It will not admit of question that the rights devolved upon Vasse by the abandonment could, in case of his death, have passed to his personal representative, and when the money was received, be distributable, as assets. Why then should it not be assets in the hands of the assignees?

Considering it in the light in which Lord Hardwicke viewed it, as an equitable trust in the money, it is still an interest, or at all events a possibility coupled with an interest. Besides, "all deeds, books, accounts, papers, and writings of the bankrupt" are to be taken into possession. Now the abandonment, and other documents connected with it, fall precisely within these terms; and as we shall immediately see, whatever is taken possession of by the commissioners, is to be passed to the assignees. The sixth section provides

"that the commissioners shall assign, transfer, or deliver over all and singular the said bankrupt's *estate* and *effects* aforesaid, with *'all muniments and evidences thereof,'* to the assignees so chosen."

And for the most part the words "estate and effects" are used throughout the act as descriptive of the property passing under the assignment. The 11th, 12th, and 13th sections of the act respect more particularly the transfer of the real estate, of the mortgages, and of the debts of the bankrupt. It is only necessary to say that they contain no language abridging the proper inferences deducible from the language of the fifth section.

The 18th section contains provisions respecting the surrender and examination of the bankrupt, and are very material. It provides that upon such examination, he shall

"fully and truly disclose and discover all his or her effects and estate, real and personal, and how and in what manner, and to whom and upon what consideration, and at what time or times he or she hath disposed of, assigned, or transferred, any of his or her goods, wares, or merchandise, moneys, or other effects and estate, and of all books, papers, and writings relating thereunto, of which he or she was possessed or in which he or she was in any ways interested or entitled or which any person or persons shall then have, or shall have had in trust for him or her or for his or her use at any time *before* or after the issuing of the said commission, or whereby such bankrupt, or his or her family, *then hath or*

may have, or except any profit, possibility of profit, benefit, or advantage whatsoever, "

&c.; It then goes on further to provide that the bankrupt shall, upon such examination, execute in due form of law, such conveyance, assurance, and assignment, of his or her estate, whatsoever and wheresoever, as shall be deemed and directed by the commissioners to *vest the same* in the "assignees," and also requires the bankrupt to deliver up "all books, papers, and writings relating thereunto" which are in his possession, custody, or power, at the time of the examination; upon his default in these particulars, he is deemed a fraudulent bankrupt, and deprived of a right to a certificate of discharge, and subjected to severe punishments. If there were any doubt upon the meaning of the language of

the fifth section, we think it is cleared up and illustrated by that of the present. Here, the words " *profit, possibility of profit, benefit, or advantage* whatsoever," are used, and show that mere interests *in praesenti* and capable of present enjoyment, were not alone within the scope of the legislative enactments, but also all such interests, or possibilities of interest as might thereafter beneficially arise from present vested rights. It extends to such effects and estate "whereby the bankrupt then hath, or may have or expect any profit." It has been supposed, that this clause looks solely to property, which was not capable of assignment, at the time of the bankruptcy, because not then vested; inasmuch as the bankrupt himself, and not the commissioners, is required to make an assignment of it. If this were so, it would not affect the present case, because we are of opinion, that the claim under consideration, was completely vested in right and interest in Vasse, at the time of his bankruptcy. We think, however, that this clause does not justify so narrow an interpretation. The disclosure is required of estate and effects, in which the bankrupt was interested, as well *before* as after the issuing of the commission, and the bankrupt is required to execute conveyances not of such estate and effects merely as accrued after the commission, but of his estate, "whatsoever and wheresoever." The object of the provision was to make such conveyances auxiliary to, and confirmatory of the assignments made by the

commissioners, and we believe, that in practice, it was so generally understood and acted on while the statute was in force. The 50th section of the act has been supposed to demonstrate the correctness of the construction of the statute contended for by the counsel for the original plaintiff. It declares

"That if any estate, real or personal, shall *descend, revert to,* or become vested in any person after he or she shall be declared a bankrupt and before he or she shall obtain a certificate, &c.;, all such estate shall, by virtue of this act, be vested in the said commissioners, and shall be by them assigned and conveyed to the assignees"

&c.; This section plainly refers to estate to which the bankrupt had no right or title whatever, in law or equity, vested in interest or in possession, at the time of his bankruptcy. The cases put are of property descending, reversing to, or becoming vested in the bankrupt. In respect to a descent cast after the bankruptcy, it is manifest that nothing could pass by any antecedent assignment of the commissioners.

The heir, during the lifetime of his ancestor, has no right, claim, title, or interest in the ancestral estate. It is a mere naked expectancy, liable to be defeated at the will of the ancestor at all times, and in no just sense a possibility of interest, a right in the thing itself. The other words, "reverting

to, or become vested" in the bankrupt, require a like interpretation. They allude to cases where the party had nothing vested in him, as a subsisting interest, either absolute or contingent, *in esse* or *in futuro,* until after the bankruptcy, and when any such interest falls in before the certificate of discharge, the commissioners, and not the bankrupt, are to assign it, a circumstance which demonstrates that no stress ought to be laid upon that part of the 18th section, already alluded to, respecting a conveyance by the bankrupt himself, except as a confirmation, and not as a principal assurance. It seems to us then, that the 50th section aids rather than shakes the interpretation of the statute which has been already announced. It

applies to no possibility of profit, benefit, or advantage, vested at the time of the bankruptcy (as the present case is), but to interests accruing to the party for the first time, *de jure* as well as *de facto,* after the bankruptcy. This view of the matter renders it unnecessary to consider whether there is any substantial difference between the English statutes of bankruptcy and our own on this subject, and of course in the authorities applicable to it. Our opinion proceeds upon the purview and objects, and on the terms of our own statute, and we are accordingly of opinion that the judgment of the circuit court ought to be reversed and a judgment entered in favor of the original defendants. It is to be understood that upon the last point this is the opinion of the majority of the Court.

The cause must be remanded with directions to enter a judgment accordingly for the original defendants.

This cause came on, &c.;, on consideration whereof it is ordered and adjudged by this Court that the judgment of the said circuit court in this cause be and the same is hereby reversed and annulled, and that a judgment be entered in the suit in favor of the plaintiffs in error, Cornelius Comegys and Andrew Pettit, and the cause remanded to said circuit court with directions to enter judgment for the plaintiffs in error in this Court, Cornelius Comegys and Andrew Pettit, accordingly.