

Nugent Vs. Boyd

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Appellant : Nugent

Respondent : Boyd

Judgement :

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44 U.S. (3 How.) 426

APPEAL FROM THE CIRCUIT COURT OF THE

UNITED STATES FOR EAST LOUISIANA

SYLLABUS

The principles established in the case of *Ex Parte City Bank of New Orleans in the matter of Christy, assignee of Walden*, renewed and confirmed.

But this Court does not decide whether or not the jurisdiction of the district court over all the property of a bankrupt, mortgaged or otherwise, is exclusive, so as to take away from the state courts in such cases.

The controversy was between the bankrupt's assignee, on one side, and a mortgage creditor and purchasers at the sale under state process of the mortgaged premises, on the other.

The points to be

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decided grew out of the bankrupt law, and especially out of the saving in favor of state liens in the 2d section, and the jurisdiction granted to the district and circuit courts of the United States in cases of bankruptcy by the 6th and 8th. The validity of certain rules established by the District Court of Louisiana, sitting in bankruptcy, was questioned, and the mortgage creditor, not having proved under the commission, claimed exemption from those rules, and asserted the right to pursue his prior lien in the state court.

The complainant's bill stated in substance that Elizabeth Norton filed her petition to be declared a bankrupt on 9 May, 1842. On 1 June it was decreed accordingly, and Richard Nugent appointed assignee.

At the time, and long before the date of the petition, George W. Boyd, one of the defendants, was the holder of notes, secured by mortgage duly recorded according to the laws of Louisiana, for the sum of \$9,000, on which judgment had been rendered, order of seizure and sale granted, and execution issued and been levied, all before the date of the bankrupt's petition. The levy took place on 16 February, 1842. The sale was the only proceeding after the date of the decree of bankruptcy, that decree being dated the 1st and the sale taking place on 4 June, 1842.

The bill admitted that all the forms and notices &c., required by the laws of Louisiana for the sale of mortgaged premises under execution, were observed, but

set up the petition and decree of bankruptcy, made before the sale, and alleged, that before the property was sold the assignee gave written notice of the decree, and of his appointment as assignee under it, to the sheriff, the mortgage creditor, Boyd, and to Preston and Phelps, who afterwards became the purchasers of the mortgaged premises at sheriff's sale, cautioning them respectively, and claiming at the same time the right to stay the sale, and take the property into his own hands for sale and distribution under the rules of the bankrupt court. Copies of the proceedings in bankruptcy and of the rules of the bankrupt court were made exhibits to the bill. These general orders of the District Court of the United States for the District of Louisiana, sitting in bankruptcy, and purporting to be made in pursuance of the authority delegated to it by the Bankrupt Act, and especially the 6th section thereof, provided in substance that notice should be served on all creditors of the bankrupt who had any special mortgage, lien, or privilege. The assignee was authorized to take a rule on the mortgage creditor to show cause why the mortgaged premises should not be sold by the assignee, and the court would thereupon pass in order of sale, which order should *ipso facto* annul the mortgages, liens &c., existing on the property sold, and upon its presentation to the recorder of mortgages, he should be required to cancel the inscription of all such mortgages, liens &c., on his records, and the liens, privileges &c., should attach to the proceeds in the hands

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of the assignee. The mortgage creditor was entitled, under certain reservations, to prescribe the terms of sale, and at such sale might become the purchaser, but was required to pay the expenses and commissions on the sale, and the surplus, if any, over and above the amount of his mortgage, but these privileges were allowed only on the condition of his filing the proof of his debt in the registry of the court.

The complainant alleged, that by the act of Congress the rules aforesaid made in pursuance thereof, and the proceedings thereunder in the case of the bankrupt, the sale should have been stayed, and the said George W. Boyd having been notified and cited to appear and contest the proceedings in bankruptcy, all the acts

done under color of the state process, after the date of the petition, were irregular and void; that Preston and Phelps having also been notified and cautioned, they derived no title from the sheriff's sale, such sale being invalid.

The bill prayed that the sheriff's sale might be set aside, the title of Preston and Phelps declared null; that George W. Boyd be compelled to come into the district court, sitting in bankruptcy, and conform himself in all things to the rules of said court in such cases, and for other and general relief.

To this bill there was a demurrer, which, admitting all the facts, insisted, in point of law,

1. That the petition, decree, appointment of the assignee &c., did not prevent the mortgage creditor from enforcing his lien under the process of the state court.
2. That the district court had no right to pass the rules insisted on.
3. That the mortgage creditor was not bound by law to submit his claims to the district court, sitting in bankruptcy, but might elect not to prove his debt, and still pursue his lien and remedy under the law.
4. That the title obtained at the sheriff's sale was, according to the facts set forth by the complainant, a good title for the purchasers against the assignee.

On the hearing of the argument on the bill and demurrer, the circuit court sustained the demurrer, and ordered the bill of the complainant to be dismissed.

From this decree the complainant appealed.

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MR. CHIEF JUSTICE TANEY delivered the opinion of the Court.

It appears in this case that in January, 1844, a bill was filed in the Circuit Court of the United States for the Eastern District of Louisiana, sitting in chancery, by Richard Nugent, assignee of the estate of Elizabeth Norton in bankruptcy, stating

that the said Elizabeth Norton, on 9 May, 1842, filed her petition in the district court of the United States to be declared a bankrupt, and that she was accordingly decreed to be such about 1 June in

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the same year; that she returned in her schedule two lots of ground in the City of La Fayette particularly described in the bill, and that George William Boyd was, among others, returned as a creditor for the sum of \$9,000, and that notice was served on him of the proceedings in bankruptcy. The bill further states that prior to and at the time of the petition in bankruptcy, the two lots above mentioned were affected by a special mortgage to the said Boyd, which was valid by the laws of Louisiana, for the sum of \$9,000 and upwards; that prior to the bankruptcy of Elizabeth Norton -- that is to say, about 11 November, 1841 -- Boyd commenced suit upon his said mortgage in the proper state court of Louisiana and obtained judgment, with the privileges of a mortgage, and issued execution thereon, which was levied upon the said property about 16 February, 1842, and on or about 4 June following, the property was regularly sold by the sheriff under the execution to Isaac T. Preston and Abner Phelps, who took possession of the said two lots and continue to hold them, claiming as owners. The bill further states that the complainant, having received notice of the levy and intended sale under the execution, duly notified the said Boyd, Preston, Phelps and the sheriff in writing, before the sale, of his appointment as assignee as aforesaid, and cautioned them not to proceed with the sale, but that the parties, continuing and intending to defeat the just rights of the complainant, proceeded to sell, and placed the purchasers above mentioned in possession of the property in question. The complainant refers to and exhibits with his bill certain rules adopted by the district court of the United States for the disposition of real estate surrendered by bankrupts, and encumbered by mortgages and charges, that by virtue of the Bankrupt Act, all the proceedings in the state court ought to have been stayed, from the moment the petition of the bankrupt was filed, and that the subsequent proceedings were irregular, and conferred no title on the purchasers, and that the complainant was entitled to take the property from the hands of the sheriff, and to

administer and sell the same under the direction of the district court by virtue of the act of Congress and the rules of court above mentioned. The bill then prays process against Boyd, Preston, and Phelps, and that the proceedings under the execution subsequent to the petition in bankruptcy should be declared irregular; that the title of Preston and Phelps from the sheriff should be decreed to be null and invalid, and the said Preston and Phelps be ordered to restore the said lots to the possession of the complainant, to be administered and sold by him in conformity with the orders of the district court of the United States, and in pursuance of the rules before referred to, and that Boyd should be directed to come into the district court, and conform himself to the orders of the court and the rules aforesaid.

The defendants appeared and demurred to the bill, and upon

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final hearing on the demurrer, the following decree was passed by the circuit court:

"This is a bill in equity presented by an assignee in bankruptcy to set aside a certain sale, made under a writ of seizure and sale from the District Court of Louisiana, upon the ground that the district court of the United States was, by the bankrupt law passed by Congress on 19 August, 1841, vested with exclusive jurisdiction over all matters appertaining to the settlement of the affairs of the bankrupt, and that consequently the sale made by the District Court of Louisiana has transferred no legal title to the property. The bill further claims the property sold as a part of the property of the bankrupt to be sold or otherwise disposed of under the orders of the district court of the United States. It appears that the property in question consists of real estate, and that the same was sold to satisfy a special mortgage held by the creditor who obtained the order of seizure and sale from the state tribunal."

"I have, after an attentive consideration of the various allegations in the bill, ordered the same to be dismissed, and shall now proceed to state very briefly the grounds upon which I acted. In the first place, I do not consider that there is any

equity in the bill; the property was specially mortgaged to satisfy the claim of the creditor who demanded the sale, and it does not appear that in the assertion of his right he has in any manner interfered with the rights of the other creditors of the bankrupt. It does not appear that any doubt existed as to the validity of the mortgage or that the creditor has obtained any right or any advantage over the other creditors which the district court, sitting in bankruptcy, would not have been bound to award him under the express provisions of the bankrupt law. It is quite clear that the liens and mortgages which are valid under the state law must be protected by the district court of the United States, sitting in bankruptcy, and it will not be pretended that the creditor at whose instance the property in question was sold would not have been entitled, under any and all circumstances, to the proceeds of that property to satisfy the amount alleged to be due him. What benefit would then accrue to the general creditors of the bankrupt by the interference of this Court in a matter which seems to have been fairly and finally adjudicated? While I am well satisfied that no good would arise from such an interference, I am equally well satisfied that great injustice would be done both to the mortgage creditor and to the estate of the bankrupt, by subjecting both unnecessarily to additional costs and expenses."

"I agree fully in the opinion that upon the ground of expediency the jurisdiction of the district court of the United States over all the property of the bankrupt, mortgaged or otherwise, should be exclusive, but I do not understand the bankrupt law to render it so. Where a creditor, by virtue of a special mortgage, elects to foreclose that mortgage before a state tribunal, the federal court is not called

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upon to interpose except in cases where from the nature of the case wrong or injustice may be done to other creditors in interest, or where the mortgage itself may be contested."

"I wish it, however, to be distinctly understood that I am fully of opinion that the district court of the United States is vested with jurisdiction over mortgaged property belonging to the bankrupt, and that when a proper case is shown, it has

power to foreclose a mortgage and to do all other acts necessary to bring about a final distribution and settlement of the bankrupt estate. I am also of the opinion that in a case where a creditor calls in question the validity of a mortgage held by another creditor, it is the duty of the said court to exercise jurisdiction over the questions involved, and if necessary to declare the mortgage null and void."

"In the case before me, no such question is involved, and I see no reasons why the equity powers of this Court should be exercised to do that which cannot change the rights of the parties interested, but which would have the effect of doing a positive injustice to the mortgage creditor by subjecting his property to useless costs and expenses."

"It is therefore ordered that the complainant's bill be dismissed."

We have inserted the whole of this decree because we think the court was not only right in dismissing the bill, but, with a single exception, we concur also in the principles and reasoning on which the learned judge founded his decision. The exception to which we allude is that part of the decree in which he expresses his opinion, that upon the ground of expediency the jurisdiction of the district court of the United States over all the property of the bankrupt, mortgaged or otherwise, should be exclusive, so as to take away from the state courts any jurisdiction in such cases. Upon that subject it is not our province to decide, and we have no desire to express an opinion upon it. But in every other respect, the decree conforms to the opinion delivered by this Court, at the present term, upon the motion for a prohibition in the case *Ex Parte City Bank of New Orleans in the matter of William Christy, assignee of Daniel T. Walden, a Bankrupt v. City Bank of New Orleans*. In that case the opinion of this Court in relation to the jurisdiction of the district court in matters of bankruptcy has been fully expressed, and need not be repeated here, and according to the principles therein stated, the decree of the circuit court in this case must be

Affirmed.

MR. JUSTICE CATRON.

I think the adjudication in this case is in conflict with that made in the Circuit Court at New Orleans in *Christy against The City Bank*, and in support of which, a majority of my brethren saw proper to express their views at a previous day during this term, in the unsuccessful application of the bank for a prohibition, but that the

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cases are alike -- and one cannot be maintained, and the other overthrown.

In that case the petition of the assignee set forth the entire legal grounds, why the district court should annul the judgments in the state court, and pronounce the sale void.

1. That the property sold was given in by Walden, the bankrupt, as part of his effects.
2. That the bank had notice thereof, before the sale by the sheriff.
3. That the sale was void, being contrary to the Bankrupt Law, which operated to stay all further proceeding so soon as Walden's petition was filed, and was a bar to any further prosecution of the suit until an assignee should be appointed. That the sale with notice was a fraud upon the act of Congress, and the other creditors of Walden, by reason of the law, because the bank was endeavoring to obtain an illegal preference.
4. That at the sale the property was struck off in blocks, although consisting of different buildings, at two-thirds of its value: "All of which actings and doings are prohibited by law, and render said sale null and void."
5. That the sale was in other respects irregular, the legal formalities not having been observed.
6. That the mortgage was void for usury, because in effecting the loan the bank gave Walden bonds on the Second Municipality instead of money, and they were then at a discount at from twenty to twenty-five percent

To these allegations the bank answered:

1. By plea that the district court was not by law empowered to decide on the matters charged.
2. That all the matters and things set forth had already been decided by a court of competent jurisdiction -- referring to the adjudications by name.
3. The defendant answers and avers that the mortgage was legal and valid and given upon a full and adequate consideration.
4. That the order of sale was duly granted, and the writ thereon properly issued, and that the property described in the petition was lawfully seized, and after a compliance with all the legal formalities, was sold, and adjudicated to the defendants; that the price was fully paid by giving a credit, and that the property is held under an indefeasible title.
5. All the allegations in the petition not admitted are denied, and a trial demanded of them.

This answer was excepted to as containing no legal grounds of defense; the question was adjourned, under the 6th section of the Bankrupt Law, to the circuit court to be there heard and determined. It stood in that court as on bill and answer; the answer was taken of course as true in all its parts, the only question being whether

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any legal ground of defense was furnished by the plea, supported by an answer, denying the alleged unfairness of the sale, presenting the same question in substance as did the case of [*Harpending v. Dutch Church*](#), 16 Pet 455. By setting the case down on plea and answers, the proceedings in the supreme and inferior state courts were admitted of necessity to have been properly and fairly conducted, and the sale legally and fairly made. This was the undoubted aspect of the case as presented to and decided by the circuit court. Its decree, in the form of instructions to the bankrupt court, is first that the latter had full and ample powers

to try all the questions presented in the assignee's petition; 2d, that the sale made under the seizure by order of the state court was void; and that the bankrupt court should declare it so; 3d, that the bankrupt court had full power to retry the validity of the mortgage and ascertain whether it was void for usury or otherwise, and this on the ground exclusively that the proceedings in the state courts were annulled by force of the bankrupt law, and the fact of Walden applying for its benefit.

Taking the petition and answer together, and a case existed in all its features like the present, on the title by execution, each being a fair and regular proceeding in the state court. One is suppressed, and the other maintained. And on what ground does the district judge assume to act contrary to the former adjudication? Because it was equitable and for the best interests of the estate to be distributed, in his judgment. The obvious meaning of which is that he had power to overthrow the title or not, at his discretion, and that such discretion was the law of the case and the tenure of the title, according to the true intention of the Bankrupt Act. On this assumption are the two cases attempted to be reconciled, and on no other can they avoid direct conflict, even in appearance. In reality, the one title is as good as the other. The tendency of such a doctrine is too threatening to titles to be silently acquiesced in. Did Congress intend that the force and effect of judgments and executions in a state court, should depend on the sole discretion of a judge sitting in bankruptcy? Was it intended to discard the axiom, that unrestrained discretion in those that govern, is inconsistent with the rights of those that are governed, be they of property or person? It is very difficult to suppose so, and as difficult to accommodate the construction of the act to such a supposition. It is declared

"That it shall not be construed to annul, destroy, or impair, any liens or mortgages, on property real or personal, which may be valid by the laws of the states respectively."

Here, two liens are combined -- one by mortgage, the other by execution levied. In *Christy v. City Bank*, as already stated, that by mortgage was recognized as a right protected by the act, but to be administered in the bankrupt court only; that by execution was

pronounced void. This decision the court below was asked to follow out in the case before us, and refused.

By the execution levied, the lien "was valid by the laws of the state" in the words of the saving clause; the remedy by seizure created the right; to annul, or to stay the execution, impaired a right, excepted out of the act. Since the opinions were delivered in the *ex parte* application of The City Bank, we have in effect so held at the present term, in *Waller v. Best*.

In making exceptions in favor of liens created by judgment and execution, Congress was governed by practical considerations. The states usually were large, the bankrupt courts in many of them far off from the creditors, the debts owing by the bankrupt small in amount to a great extent; for these recoveries would be had in the inferior courts and before magistrates; the property would be seized by execution, and he the debtor be driven into bankruptcy; this step might be taken secretly. The officer having possession of the property had to dispose of it according to the commands of the writ and make return to the state tribunal, a return that the debtor had applied for the benefit of the bankrupt law would not be a legal return, as I have held, and always supposed, and that a decree declaring the party a bankrupt, would not alter the case; as in either, the lien would be not only impaired, but destroyed where the levy alone gave it, as is the case in many instances. To drive the small creditor into the bankrupt court to establish his demand and effectuate his lien, would often have been worth more in trouble and expense than the debt, and in the meantime the property, being abandoned by the officer, and not taken possession of by the assignee, would in many instances perish. These facts were too palpable for Congress to overlook. To protect such liens, I take it the exception was a compromise between the opponents and friends of the bill; the one side supporting rights secured by the state laws, and the other seeking to adopt a different rule under the Constitution of the United States, in regard to the relation of debtor and creditor.

In many cases, the bankrupt might owe debts in other states than that where he would be declared bankrupt; then other difficulties would arise on executions being levied in the foreign jurisdiction, to which the powers of the bankrupt court could not extend. In all the cases enumerated the assignee had given to him the same powers the bankrupt previously had, to sue and defend, and no material difficulty could arise (or has arisen) in adjusting the claims in the state courts, to which the assignee was bound to apply.

That a mortgage can be foreclosed in the bankrupt court, and the lien given by it be preserved there, I have never doubted if the jurisdiction of a state court had not attached and was not ousted by the proceedings in bankruptcy.

For the foregoing reasons, I think the court of Louisiana was

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mistaken when it assumed to have power to suppress the sale made by the sheriff or to let it stand, at its discretion.

The decree is deemed entirely proper; nor would the reasons for it have been noticed had not my brethren adopted them to the extent above, and with which adoption I cannot concur.