SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Shawhan Vs. Wherritt

Shawhan Vs. Wherritt

SooperKanoon Citation : sooperkanoon.com/80065

Court : US Supreme Court

Decided On : 1849

Appeal No. : 48 U.S. 627

Appellant : Shawhan

Respondent : Wherritt

Judgement :

Shawhan v. Wherritt - 48 U.S. 627 (1849)
U.S. Supreme Court Shawhan v. Wherritt, 48 U.S. 7 How. 627 627 (1849)

Shawhan v. Wherritt

48 U.S. (7 How.) 627

APPEAL FROM THE CIRCUIT COURT OF THE

UNITED STATES FOR THE DISTRICT OF KENTUCKY

SYLLABUS

A decree of the district court of the United States, sitting in bankruptcy, whereby a person proceeded against, *in invitum* was declared to be a bankrupt is sufficient evidence, as against those who were not parties to the proceeding, to show that

there was a debt due to the petitioning creditor, that the bankrupt was a merchant or trader within the meaning of the act, and that he had committed an act of bankruptcy.

The first section of the Bankrupt Act declares that the making of any fraudulent conveyance, assignment, sale, gift, or other transfer of lands, tenements, goods, or chattels is the commission of an act of bankruptcy.

No creditor can, by instituting proceedings in a state court after the commission of

Page 48 U. S. 628

an act of bankruptcy by his debtor, obtain a valid lien upon the property conveyed by such fraudulent deed, if he has notice of the commission of an act of bankruptcy by the debtor. It passes to the assignee of the bankrupt for the benefit of all the creditors.

A lien thus acquired is not saved by the proviso of the second section of the bankrupt law. That proviso does not protect liens which are inconsistent with the second and fifth sections of the act, and these sections declare such a lien to be void.

On 6 April, 1842, Benjamin Brandon executed the following deed:

"This indenture, made and entered into this 6 April, 1842, between Benjamin Brandon, of Harrison County and State of Kentucky, of the one part, and William A. Withers, of the county and state aforesaid, of the other part, witnesseth:"

"That the said Benjamin Brandon, for and in consideration of one dollar, to him in hand paid, and for the further consideration hereinafter mentioned, hath given, granted, bargained, sold, released, conveyed, and confirmed, and by these presents do give, grant, bargain, sell, release, convey, and confirm unto the said William A. Withers, his successor or successors forever all the estate, real, personal, and mixed, of whatever nature or kind it may consist (except such property only as by law not subject to execution), said estate hereby conveyed consisting of a tract of about 336 acres of land situated in the state and county

aforesaid, and the same tract on which said Brandon now resides, and on which is a steam mill and distillery, the boundary of which land is more particularly designated in the several deeds which said Brandon holds for said land; also five negroes, two wagons and teams, about 400 head of hogs, about 15,000 pieces of cooper's stuff, all his stock of horses, cattle, and sheep, his household and kitchen furniture and farming utensils, his debts and choses in action of every kind and description, it being the intention of said Brandon by this deed to convey to the said Withers and his successors forever all his estate, real, personal, and mixed, and choses in action, with the exceptions hereinbefore expressed, whether the same be particularly mentioned and set forth in this instrument or not. To have and to hold all the estate, real, personal, and mixed, and choses in action, hereby conveyed to the said William A. Withers and his successor or successors, forever, in trust for the following purposes, namely, to collect the debts and choses in action due, payable, or owing to said Brandon and to sell the real estate hereby conveyed, either all together or in lots, as said trustee may think most advisable, at public auction, to the highest bidder, on the

Page 48 U. S. 629

following payments: namely, one-third of the purchase money to be paid in hand, and the residue in one and two years, and the slaves and personal estate to be sold at public auction to the highest bidder on a credit of twelve months, and after making to said trustee a just and reasonable compensation for his trouble and expenses in executing this trust, to pay all the money which he may receive as trustee aforesaid, either by the collection of debts or choses in action, from the proceeds of the sale of the trust estate, to all the creditors of said Brandon, ratably, proportionally to the amount of their respective debts or demands; but should anyone or more of the creditors of said Brandon become the purchaser or purchasers of any portion of the real or personal estate, or slaves, hereby conveyed, said trustee is authorized and empowered to accept the debt or debts due or owing by said Brandon to such purchaser or purchasers, in payment for their respective purchases, so far as said debts may go; and in such cases, if any such should occur, only the residue of the price to be distributed *pro rata* as

aforesaid; and after the payment of all said Brandon's debts, to pay the residue, if any, to said Brandon, his heirs and assigns; and the title to the estate hereby conveyed he doth hereby warrant and defend to said Withers, and his successor or successors, forever, in trust for the purposes aforesaid, against the claim or claims of him, the said Benjamin Brandon, and against all other claims. In testimony of which, the said Benjamin Brandon hath hereunto subscribed his name and affixed his seal this day and year first above written."

"BENJAMIN BRANDON"

On 3 May, 1842, John L. Shawhan and others filed a bill in the Harrison Circuit Court of Kentucky, sitting as a court of equity. The bill recited that the complainants were creditors of Brandon; that he had executed the deed above set forth, "for the purpose of hindering, delaying, and defrauding the creditors of the said Brandon in the collection of their debts;" that the trustee was about to sell and dispose of the property mentioned in the deed; and prayed for an injunction to stop him.

On the same day an injunction was issued and served upon Brandon and Withers, the trustee.

On 21 May, 1842, Brandon and Withers filed separate answers to the bill. Brandon admitted his indebtedness and the execution of the deed of trust, averred that Shawhan was present while the deed was preparing, and expressed himself satisfied with its provisions, denied most positively that he executed said deed either to hinder, delay, or defraud

Page 48 U. S. 630

his creditors, but, on the contrary in good faith believing that general satisfaction would be given to them. The answer of Withers was to the same effect as that of Brandon.

On 25 June, 1842, Withers and Brandon applied for an order to change the venue. It was granted, and the record sent to the County of Bourbon.

On 24 September, 1842, John Lail presented a petition to the United States Kentucky District Court, sitting in bankruptcy. It alleged that, on 6 April preceding, Brandon had made a fraudulent conveyance with intent to defraud his creditors and that he had concealed himself to avoid being arrested. It then prayed that the court might declare the said Benjamin Brandon a bankrupt. With the petition were filed several exhibits, which it is not necessary to state particularly.

On the same day an order was passed setting down the hearing for the 4th of the ensuing November, and in the meantime enjoining the defendant and all others from removing or otherwise disposing of the property of the defendant or which, on the decree, the assignee might be entitled to reclaim and recover.

On 22 October, 1842, the Bourbon County Court, before which the suit of Shawhan and others against Brandon and Withers was pending, passed a decree annulling and setting aside the deed of trust as being in point of law fraudulent and void. The court enumerated many of the creditors, whose claims had been exhibited, and then ordered that

"so much of the personal property, slaves, and real estate mentioned in said deed of trust as may be necessary for the purpose be sold to satisfy the aforesaid debts."

Thomas B. Woodyard was appointed to make the sale, according to certain given directions.

On 22 November, 1842, the district court of the United States passed the following order:

" *JOHN LAIL v. BENJAMIN BRANDON"*

"The prayer of the petitioner that the defendant be declared a bankrupt having been heard upon the allegations of the petition, and the proofs taken and filed (the defendant having failed to answer), and now having been fully considered: "

"It is found and adjudged by the court that the said Benjamin Brandon, of Harrison County, being a retailer of merchandise, and indebted as in the petition mentioned,

did, by making the deed of conveyance and assignment to William A. Withers of all his property, real, personal, and mixed, and rights of property, subject to the payment of his debts by the

Page 48 U. S. 631

laws of the state, bearing date 6 April, 1842, and on the 7th day of that month and year admitted to record in the clerk's office of the Harrison County Court, and in the petition mentioned, whereof a copy is filed here, now adjudged a fraudulent conveyance and assignment, and by concealing himself to avoid being served with process, whereby a suit had been commenced against him, thereupon became and is a bankrupt."

"Perry Wherritt is appointed the assignee, and required to execute bond in the penalty of $5,000, with two sufficient sureties."

On 24 November, 1842, Woodyard, the commissioner appointed by Bourbon County Court, proceeded to sell the personal property of Brandon.

In May, 1843, the commissioner made his report to Bourbon County Court, whereupon another decree was passed reciting that the former sale was insufficient to pay the debts, and directing that so much of the land comprised in the deed of trust as might be necessary for the purpose should be sold for the payment of the balance of the debts.

On 14 July, 1843, the commissioner sold the land, in conformity with the above order, and John L. Shawhan became the purchaser. A writ of possession was issued in his favor, in April, 1844, which will be mentioned again in its proper place.

On 10 August, 1843, Wherritt, as assignee of the estate of Benjamin Brandon, filed a bill in chancery in the District Court of the United States for the District of Kentucky against John L. Shawhan and the other parties named in the caption of this statement. The bill referred to the former proceedings of the court declaring Brandon to be a bankrupt, and all the other facts in the case. It stated that the

assignee had taken possession of the property of the bankrupt, including the land; that Shawhan and others knew of the commission of the act of bankruptcy, but had nevertheless obtained a decree of Bourbon County Court, under the authority of which they had sold the land to Shawhan, who was threatening to disturb the possession of the complainant, and by his threats and false claims of title was preventing the complainant from disposing of the land. It then prayed that Shawhan might be ordered to surrender up, to be cancelled, any pretended claim, and that all the parties might answer &c.;

On 18 December, 1843, John L. Shawhan, Daniel Shawhan, and Benjamin Berry answered separately. Shawhan admitted the execution by Brandon of the deed of April

6, 1842, but denied that he had committed any acts of bankruptcy. It admitted also the proceedings by himself in the state court to set aside the deed as fraudulent, and the decree and sale as stated above, but insisted that by said proceedings he had acquired a lien on the property which could not be impaired by the proceedings in bankruptcy, and that the proceedings in the state court, having been commenced before those in bankruptcy, could not be affected by those of the district court of the United States.

It is not material to state the answers of the other defendants. To these answers there was a general replication.

At the April term, 1844, the Bourbon County Court passed a decree reciting the sale to Shawhan by the commissioner, Woodyard, and proceeding as follows, *viz.:*

"It is therefore decreed and ordered that the said purchases made by the said Shawhans be and the same are hereby confirmed; that the amounts so decreed to said Shawhans be and the same are hereby extinguished and satisfied by the aforesaid purchases made by them except as to said balance of $149.34, which was decreed to the Shawhans above the amount of their purchases. That a writ of

possession issue in favor of said John L. Shawhan, to put him into the possession of said tract of land mentioned in the complainant's bill; that Thomas B. Woodyard, the commissioner herein, convey all the right and title of the defendants, Brandon and William A. Withers, in and to said tract of land, to said John L. Shawhan, by deed of special warranty, warranting the title of the same against the claims of the said Benjamin Brandon and William A. Withers, and all persons claiming by, through, or under them, but not against the claim or claims of any other person or persons whatever."

The decree then proceeded to regulate certain details.

In June, 1844, the bill filed by Wherritt in the district court of the United States came on for hearing, when the complainant prayed that the defendants might be ordered to pay over the amount of sales of the personal property which had been sold under the authority of Bourbon County Court. A reference took place to a master in chancery, upon the coming in of whose reports the court passed the following final decree on 10 June, 1844:

"This cause having been heard at this term and argued by counsel, thereupon, on consideration thereof: "

"It is adjudged by the court that the complainant was invested with all the estate which was of said Brandon at the time he became a bankrupt, and that the defendants did not, by their after-commenced suit and proceedings therein had

Page 48 U. S. 633

(with notice of his act of bankruptcy), obtain a right to have it thereby subjected exclusively or first to the satisfaction of their demands, and that the defendants, John L. Shawhan, Daniel Shawhan, George H. Perrin, Benjamin Berry, Catharine Snodgrass, and Isaac Miller, by the subsequent sales of the movable property by them so caused, did become, on the demand of the complainant here made, and are each of them, liable for his, their, and her proper portion of the proceeds thereof whereof they thus wrongfully obtained the benefit, and must pay the same, together with the interest thereon, to the complainant for the purpose of equal

distribution required by the statute, and it is adjudged that the sale of the land so afterwards caused by the defendants was wrongful, and assailed here by the complainant, was and is ineffectual, and did not invest the defendant, John L. Shawhan, the purchaser, with the right thereto, in opposition to the title which had previously passed by decree of bankruptcy of its holder so declared, and was vested in the complainant as the assignee so appointed, but he said Shawhan, by the assertion of his pretended claims so founded, has and does injuriously embarrass the title of the complainant."

"It is therefore ordered, adjudged, and decreed that the defendant John L. Shawhan do, on or before the first day of July next, execute to the complainant, as assignee of the bankrupt estate of Benjamin Brandon, a deed of release of all right, title, and interest claimed by him, Shawhan, in and to the tract of land whereon the said Brandon resided, containing 350 acres, more or less, in the County of Harrison, in the bill and answers mentioned, with covenant of warranty against all persons claiming by, through, or under him."

"And it is adjudged and ordered that said Shawhan do, on or before the said first day of July next, deliver to the complainant the possession of the said land."

The decree then went on to specify the amounts to be paid &c.;

From this decree there was an appeal to the Circuit Court of the United States for the District of Kentucky.

On 22 November, 1844, the circuit court affirmed the decree of the district court.

The defendant appealed to this Court, and the cause came up on this appeal.

Page 48 U. S. 641

MR. JUSTICE GRIER delivered the opinion of the Court.

Perry Wherritt, as assignee of Benjamin Brandon, a bankrupt, filed his bill in equity in the District Court of the United States for Kentucky, setting forth that on regular

proceedings in said court, Brandon was deemed and held to be a merchant and trader within the Bankrupt Act, and found to have committed acts of bankruptcy by making a fraudulent transfer of his property, and by secreting himself to avoid the service of legal process, and was therefore, decreed a bankrupt on 22 November, 1842; that the complainant was duly appointed his assignee; that on 6 April, 1842, Brandon had made a fraudulent deed of trust of all his property to William A. Withers; that John L. Shawhan and others, the defendants and appellants, with a full knowledge of the acts of bankruptcy, filed their bill in chancery in the Harrison Circuit Court of Kentucky against Brandon, Withers, and others, charging that the said deed of trust was fraudulent and void; that the court decreed that the deed was void and ordered the property to be sold for the benefit of Shawhan and the other creditors who had joined in the bill; that since the decree in bankruptcy, the state court had proceeded to sell the real and personal estate of said Brandon; that Shawhan had purchased a tract of land belonging to Brandon, of 350 acres, of which the complainant had possession, whereby he was prevented from disposing of said land for a fair price and praying that

Page 48 U. S. 642

Shawhan might be compelled to surrender and cancel his claim, and for all such equitable relief, general and special, as the merits of the case may require &c.;

The answer of Shawhan admits the execution by Brandon of the deed of 6 April, 1842, but denies that he had committed any acts of bankruptcy. It admits also the proceedings by himself in the state court to set aside the deed as fraudulent and the decree and sale as stated in the bill. He insists that by said proceedings he had acquired a lien on the property which could not be impaired by the proceedings in bankruptcy, and that the proceedings in the state court, having been commenced before those in bankruptcy, could not be affected by them, &c.;

On the hearing of this cause at June term, 1844, before the district court,

"the complainant prayed as specific relief as to the movable property which was of said Brandon at the time he became bankrupt, and which the defendants

afterwards caused to be sold under the decree of the Bourbon Circuit Court, that the defendants be adjudged to pay the amount of said sales,"

and the court referred it to a master to report the amount of the sales of personal property, and afterwards decreed,

"that the complainant was invested with all the estate which was of said Brandon at the time he became bankrupt, and that defendants did not, by their after-commenced suit and proceedings therein had (with notice of his act of bankruptcy) obtain a right to have it thereby subjected exclusively or first to the satisfaction of their demands, and that the defendants, John L. Shawhan &c.;, by the subsequent sales of the movable property by them so caused, did become, on the demand of the complainant here made, and are each of them, liable for their proper portion of the proceeds thereof, whereof they thus wrongfully obtained the benefit, and must pay the same, together with interest, to the complainant for the purpose of equal distribution as required by the statute, and that the sale of the land so afterwards caused by the defendants was wrongful and assailed here by the complainant was and is ineffectual, and did not invest the defendant John L. Shawhan, the purchaser, with the right thereto in opposition to the title which had previously passed by decree of bankruptcy of its holder so declared, and was vested in the assignee so appointed,"

&c.; It was adjudged and decreed also that Shawhan should release all his title in the land to the complainant and the defendants severally pay over to the plaintiff the money received by each of them from the proceeds of the personal property.

From this decree the defendants appealed to the circuit

Page 48 U. S. 643

court of the United States for the District of Kentucky, where the decree of the district court was affirmed, and the defendants then prosecuted their appeal to this Court.

Of the numerous objections to the decree taken on the argument it will be necessary to notice but two, being those chiefly relied on by the counsel for the appellants.

1. That the decree in bankruptcy was not evidence, as against the defendants, who were no parties to it, either that there was a debt due to the petitioning creditor or that Brandon was a "merchant or trader" within the meaning of the Bankrupt Act, or that he had committed an act of bankruptcy. It is a sufficient answer to this objection 1st, that the thirteenth section of the Bankrupt Act declares, that "the proceedings in all cases of bankruptcy shall be deemed matters of record."

2. Both parties admit the deed made by Brandon on 6 April was fraudulent, and the first section of the Bankrupt Act declares the execution of such a deed an act of bankruptcy.

3. The record before us shows sufficiently that he was a merchant or trader, and therefore liable to be declared a bankrupt; the district court had therefore plenary and exclusive jurisdiction of the subject matter.

4. The public notice required by the act having been given, the creditors must be treated as having notice of the proceedings, and an opportunity to make their objections to them, and having neglected or refused so to do, they ought not to be allowed to impeach them collaterally, as they are in the nature of a proceeding *in rem* before a court of record having jurisdiction.

5. Even if the record in the bankrupt court be not conclusive as against the defendants, it is at least *prima facie* evidence that all facts necessary to sustain the decree were proved before the court.

And lastly, the record of this case shows sufficient evidence to sustain the decree on all points. Besides, the third section of the act declares that

"All the property &c.;, of every bankrupt (except as hereinafter provided) who shall by a decree of the proper court be declared to be a bankrupt within this act shall,

by mere operation of law, *ipso facto,* from the time of such decree, be deemed to be divested out of such bankrupt without any other act, assignment, or other conveyance whatsoever, and the same shall be vested by force of the same decree in such assignee,"

&c.; As the court had jurisdiction of the subject matter and person of the bankrupt, the decree is thus made conclusive evidence of the title of the assignee.

The English cases can have no application to this question, as there, all proceedings in bankruptcy are before commissioners under a commission issued out of chancery, and the commissioners are not a court of record.

Page 48 U. S. 644

2d. The chief and important question involved in this case is whether the appellants, after an act of bankruptcy of which they had full knowledge, could, by proceeding in a state court, obtain a valid lien and seize the property of the bankrupt to the exclusion of his other creditors, or whether such proceeding be not a fraud on the bankrupt law and therefore void.

The appellants in their answer deny their knowledge of the act of bankruptcy and that the defendant was a bankrupt before the decree. But this seems rather a denial of the law than of the fact, for the bill filed by them in the state court alleged that the deed made by Brandon of all his property to a trustee on 6 April, 1842, was fraudulent and void. The first section of the Bankrupt Act, in enumerating the acts for which a merchant or trader shall be liable to be declared a bankrupt, by proceedings *in invitum,* mentions the making of "any fraudulent conveyance, assignment, sale, gift, or other transfer of his lands, tenements, goods, or chattels," &c.; By their own showing, therefore, they had knowledge of the fact of bankruptcy. The acts thus enumerated are usually termed acts of bankruptcy, and may be considered as tests of insolvency, showing conclusively the inability of the trader to pay his debts or carry on his trade. The policy and aim of bankrupt laws are to compel an equal distribution of the assets of the bankrupt among all his creditors. Hence, when a merchant or trader, by any of these tests of insolvency,

has shown his inability to meet his engagements, one creditor cannot, by collusion with him or by a race of diligence, obtain a preference to the injury of others. Such conduct is considered a fraud on the act, whose aim is to divide the assets equally, and therefore equitably. To prevent these frauds, the English bankrupt laws give the title of the assignee a relation back to the act of bankruptcy, so as to avoid all payments, sales, or contracts made after it. The second section of our Bankrupt Act effects the same object, not by establishing the doctrine of relation in direct terms, but by declaring all such payments, transfers, &c.; void and a fraud on the act, and enabling the assignee to recover the money paid, or property transferred, for the use of the creditors. This section declares fraudulent and void not only

"future payments, securities, conveyances or transfers of property, or agreements made or given by any bankrupt in contemplation of bankruptcy, and for the purpose of giving a preference or priority to one creditor over another,"

but that "all other payments, securities," &c.;

"to any person whatever, not being a *bona fide* creditor or purchaser for a valuable consideration without notice, shall

Page 48 U. S. 645

be deemed utterly void and a fraud on this act,"

and the assignee is authorized to sue for and recover and receive the same as part of the assets of the bankruptcy.

It avoids not only payments, securities &c.;, made in collusion with a bankrupt in contemplation of bankruptcy, but those obtained by a creditor with notice, and it afterwards defines this notice which is the test of fraud or want of *bona fides* in the creditor to be "notice of a prior act of bankruptcy, or of the intention of the bankrupt to take the benefit of this act." A creditor may always recover payment of his debt, or security for it, from his debtor, unless he has notice or knowledge that his debtor has committed an act of bankruptcy, and then he is forbidden to receive

payment of his debt, or to obtain any other priority or advantage over the other creditors of the bankrupt. And if notice of this fact to the creditor makes a payment by the debtor void, it is obvious that a security or priority gained by suit in a state court after such notice could have no better claim to protection, for notice of the act of bankruptcy to the creditor is the test of the *mala fides* which vitiates the transaction.

The last proviso of the second section, which saves all "liens, mortgages, or other securities on property, which may be valid by the laws of the states respectively," subjects them nevertheless to this condition -- that they shall not "be inconsistent with the second and fifth sections of the act." Liens or securities which would be otherwise valid by the state laws, being made void by the second section when obtained after notice of an act of bankruptcy, are consequently not saved by this proviso, but the property subject to them vests in the assignee discharged from such lien, and if the property has been sold under process from a state court, the creditor is liable to refund the money thus received to the assignee of the bankrupt. Having obtained this preference *mala fide,* in fraud of the bankrupt law, he cannot be suffered to retain the fruits of it to the injury of other creditors; otherwise the whole policy and aim of the law would be frustrated.

We are of opinion, therefore, that the lien obtained by Shawhan upon the property of Brandon by his proceedings in the state court, after notice of the act of bankruptcy, was not saved or protected by the proviso to the second section of the act, and that he and the other appellants who had appropriated the assets of the bankrupt to their own use are liable to refund the same to the assignee in this suit, and that the decree of the Circuit Court of the United States for the District of Kentucky should be

Affirmed.

Page 48 U. S. 646

ORDER

This cause came on to be heard on the transcript of the record of the Circuit Court of the United States for the District of Kentucky, and was argued by counsel. On consideration whereof it is now here ordered and decreed by this Court that the decree of the said circuit court in this cause be and the same is hereby affirmed with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com