

**Oakey Vs. Bennett**

**Oakey Vs. Bennett**

**SooperKanoon Citation :** [sooperkanoon.com/80210](http://sooperkanoon.com/80210)

**Court :** US Supreme Court

**Decided On :** 1850

**Appeal No. :** 52 U.S. 33

**Appellant :** Oakey

**Respondent :** Bennett

**Judgement :**

Oakey v. Bennett - 52 U.S. 33 (1850)

U.S. Supreme Court Oakey v. Bennett, 52 U.S. 11 How. 33 33 (1850)

**Oakey v. Bennett**

**52 U.S. (11 How.) 33**

*ERROR TO THE DISTRICT COURT OF THE*

*UNITED STATES FOR THE DISTRICT OF TEXAS*

## **SYLLABUS**

A decree in bankruptcy passed in 1843 by the District Court of the United States for the Eastern District of Louisiana did not pass to the assignee the title to a house and lot in the City of Galveston and State of Texas, which house and lot

were the property of the bankrupt.

Texas was then a foreign state, and whatever difference of opinion there may be with respect to the extraterritorial operation of a bankrupt law upon personal property, there is none as to its operation upon real estate. This Court concurs with Sir William Grant, in 14 Vesey 537, that the validity of every disposition of real estate must depend upon the law of the country in which that estate is situated.

Besides, the deed made by the assignee in bankruptcy to one of the parties in the present cause was not made conformably with the laws of Texas, and letters of administration upon the estate of the bankrupt had been taken out in Texas before the fact of the bankruptcy was known there, and the creditors of the estate in Texas had a better lien upon the property than the assignee in Louisiana.

This was an ejectment, conducted by way of petition and answer, for a house and lot in the County and City of Galveston, in the State of Texas, being lot No. 13 in block No. 681.

The suit was brought by Oakey against Bennett, the administrator

Page 52 U. S. 34

of William Hall, and John H. Illies, tenant in possession. In the bill of exceptions, the suit is denominated an action of "trespass to try titles," but as the petition prayed for the restoration of the property as well as damages, it seems more proper to call it an ejectment.

Upon the trial, the plaintiff sought to derive his title from Hall, under whom the defendants claimed also.

In 1842, Hall was in possession of the lot by purchase from John S. Snyder, but no deed was at that time made.

On 9 February, 1843, Hall calling himself William Hall, late of Galveston, Texas, filed a petition in the District Court of the United States for the Eastern District of Louisiana praying for the benefit of the Bankrupt Act of the United States passed

August 19, 1841. The legal notice was given, and on 10 March, 1843, he was declared a bankrupt, and F. B. Conrad, of New Orleans, appointed assignee.

On 3 April, 1843, Snyder executed a deed to Hall of the house and lot in Galveston.

In March, 1844, Hall died, and Bennett, the defendant, was appointed administrator by the Probate Court of Galveston County in Texas.

In May, 1845, Conrad, the assignee of Hall, petitioned the district court for an order to sell the effects of the bankrupt, and, the usual preliminary proceedings being had, a public sale took place for cash. An article in the inventory was "all the right, title, and interest of the bankrupt in and to a house and lot in Galveston, Texas." Samuel W. Oakey became the purchaser of this for the price of four hundred dollars, and on 18 June, 1845, Conrad executed to Oakey a deed which contained the following recital, *viz.*:

"And the said William Hall, bankrupt, at the time he filed his petition in said court to be declared a bankrupt, and at the time, said 10 March, 1843, when he was declared and decreed a bankrupt, was possessed of a claim to a house and lots in the City of Galveston, of the exact nature of which the said Francis B. Conrad, assignee as aforesaid, could not obtain any exact knowledge or description, which claim, whether it was one or in plurality, on a house or houses, building or buildings, more or less in number, of lots, parcel, or parcels of land, be they what they were, situated in the City of Galveston, Republic of Texas, by said act of Congress, and the decrees of said court on said bankrupt's petition, with all his property and rights of property, of every name and nature, and whether real, personal, or mixed, became, by the mere operation of said act thus made and provided, *ipso facto* from the time of such decree aforesaid, and was deemed to be, divested out of such bankrupt,

Page 52 U. S. 35

without any other act, assignment, or conveyance whatsoever, and the same became vested by force of the same in Francis B. Conrad, assignee as aforesaid.

All of which rights of property or real estate, whatever might be the nature of his title thereto or interest therein, which was situated in the City of Galveston, Republic of Texas, it was my intention to sell, as assignee as aforesaid, at public auction, and the said court, on considering my petition to that effect, made judgment thereon and issued an order of sale under date of 23 May, 1845, and by virtue of said order of sale by said court, and after due and lawful advertisement made by William F. Wagner, United States marshal for the district, and at the time and place designated in said advertisement, at the hour of 12 noon on this 18 June, A.D. 1845, the said marshal did, under my direction, then and there publicly cry, adjudicate, and sell to Samuel W. Oakey, the last and highest bidder, as follows, *viz.:* "

"All the right, title, and interest of the said bankrupt (William Hall) in and to a house and lots in the City of Galveston, Texas, being lot 13, block 681, or lot 9, block 622, or both, and sold without any guarantee whatever. The said Samuel W. Oakey became the purchaser for the price and sum of four hundred dollars, the receipt of which is hereby, as it already has been, acknowledged. In consideration thereof, I, the said Francis B. Conrad, assignee as aforesaid, have bargained, sold, conveyed, assigned, transferred, set over,"

&c.;

This deed was afterwards recorded in Texas.

On 12 December, 1846, Bennett settled an account with the probate court showing that he was in advance for the estate \$1,811.03.

On 25 January, 1847, Oakey filed a petition in the District Court of the United States for the District of Texas which, after having been the subject of sundry pleas and demurrers and motions, was finally withdrawn, and an amended petition filed on 31 May, 1848. This was the subject of some motions too, but at length issue was joined on 5 June, 1848, and the cause came on for trial. Being left to a jury, they found a verdict for the defendants.

The bill of exceptions sets forth all the deeds offered in evidence by the plaintiff for the purpose of showing a title in Hall, and also the record of the proceedings in bankruptcy, to show that this title passed to himself. This part of the bill is not necessary to an understanding of the prayers addressed to the court, and it is therefore omitted. Nor is it necessary to insert the evidence, as offered by the defendant, to prove interlineations and falsifications of the record. The following are the prayers addressed to the court on the part of the plaintiff.

Page 52 U. S. 36

"The plaintiff requests the court to charge the jury -- "

" 1st. That if the jury find from the evidence that at the date of Hall's bankruptcy, he was seized and possessed of the premises in question, and that, being so possessed, he, Hall, voluntarily applied to the honorable United States District Court of Louisiana to be declared a bankrupt, and was, in accordance with the Act of Congress of 19 August, 1841, adjudged and decreed by the court to be a bankrupt, such voluntary petition and decree operated to divest and pass Hall's estate in the premises, and vested the property as absolutely in Hall's assignee as he, Hall, might have done by his own voluntary conveyance."

"Which instruction the court gave."

" 2d. That if the said assignee, Conrad, so appointed by said court, in execution of the order of said court, sold said property to plaintiff for a valuable consideration, such bankruptcy, decree, order, sale, and purchase passed the right of property as effectually to plaintiff as Hall might have done by his voluntary deed of conveyance."

"Which second instruction the court refused to give"

" 3d. That if Hall did petition, and at the time of his petition in bankruptcy surrendered the premises in question as part of his assets, although he only had possession thereof under a purchase by inchoate title, which was afterwards perfected by full grant, such subsequently acquired title enured to the benefit of

plaintiff."

"Which third instruction the court refused"

" 4th. That if the jury find from the evidence that Hall applied to the proper court, by his own voluntary petition, for the benefit of the Act of Congress of the United States of 19 August, 1841, and obtained a decree of bankruptcy on said voluntary application, then all the property of said Hall, of every kind and nature whatever, real, personal, or mixed, was thereby divested out of said Hall and vested as fully and effectually in his proper assignee, duly appointed, as the same was previously vested in Hall."

"Which instruction the court gave"

" 5th. That the act of the United States Congress of 19 August, 1841, was recognized and adopted by the laws of Texas as part of the law of the Republic of Texas."

"And this fifth instruction the court refused to give, saying that the law of the Republic of Texas referred to recognized the bankrupt's discharge, but did not affect his real estate, and here directs the clerk to insert the law referred to, which is an act of the Republic of Texas, approved February, 1841, laws of that year, p. 143, entitled 'An act for the relief of

Page 52 U. S. 37

those who have taken the benefit of the insolvent laws of other countries."

" 6th. That if Hall made a voluntary assignment in Louisiana of the premises in question in order to obtain the benefit of the said act of 19 August, 1841, such assignment was and is, in point of law equivalent to a voluntary conveyance made by Hall of said premises to the plaintiff."

"Which instruction the court refused"

" 7th. That the transcript of the record, marked A, from the United States District Court of Louisiana, is competent and conclusive evidence of what it purports to contain and what is recited therein, and that under law, said transcript of record is entitled to full faith and credit."

" 8th. That Bennett is in no better condition in relation to the property in controversy than Hall himself would have been had he been living and the defendant in this suit."

"This charge, the eighth, the court gave."

"As to the seventh instruction asked, the court charged the jury that full faith and credit should be given to the transcript of the record of the court in Louisiana; that is, that it is entitled to the same force and efficacy here that it would be entitled to in the court where the transaction was had, and of which it purports to be the record; that in this Court, as in that, parol testimony is competent to show that that which claims to be a record is void for forgery."

" 9th. That if the jury believe from the evidence that after Hall's act of bankruptcy, he became a citizen of Texas, Oakey being and remaining a citizen of the United States until the annexation of Texas to the United States, then, by the act of annexation, the property in question became as absolutely Oakey's as though Texas had been one of the United States at the date of the bankruptcy, the act of annexation having, by relation, removed every disability growing out of the laws of the place where the land is situated, and of Oakey's personal right to hold."

"Ninth refused by the court."

" 10th. That if the jury believe from the pleadings and evidence that Oakey has derived his title from or through Hall's voluntary act, either of record or by conveyance, and that the defendant Bennett only claims as Hall's administrator and Illies as his tenant, then Bennett is only the personal representative of Hall and, as such a proxy, and as fully and effectually estopped from denying Oakey's title as Hall himself would have been, and that Hall would have been absolutely estopped."

"Refused by the court. "

Page 52 U. S. 38

" 11th. That if the jury find for the plaintiff, they may find the rents as damages."

"Which the court gave."

" 12th. That the act for the relief of persons who have taken the benefit of foreign insolvent laws of Texas, passed February, 1841, before referred to, recognizes a surrender under a foreign bankrupt law, if honestly made, as a valid and legal mode of transferring the bankrupt's real estate lying in Texas."

"Which the court refused"

" 12th. That Oakey is vested with all the rights that were vested in Conrad by virtue of his due appointment as assignee of Hall."

"And this twelfth instruction the court refused to give."

" And to the failure and refusal of the court to give the instructions hereinbefore asked, and by the court refused as noted, and to the giving the said several instructions not asked, which by the court were given as hereinbefore set forth, the said plaintiff at the time excepted."

"And now, for the purpose of saving the said several exceptions taken, as well as to set forth the whole facts of the case, the court seals this bill of exceptions, and orders the same to be filed and made a part of the record, which is done 5 June, 1848."

"JOHN C. WATROUS, [L.S.] *U.S. Judge* "

The case came up to this Court upon all these points.

Page 52 U. S. 42

MR. JUSTICE Mc LEAN delivered the opinion of the Court.

Under the forms of procedure in Texas, an action was commenced by petition, on 25 January, 1847, by the plaintiff, for the recovery of a house and lot in the City of Galveston, Texas, described in the plan of said city, number thirteen, in block six hundred and eighty-one. The plaintiff gave in

Page 52 U. S. 43

evidence a deed from the proprietors of the city for the lot in controversy to James S. Holman, dated 1 June, 1840. The same lot, on 3 April, 1843, was conveyed to William Hall, by Snyder, the attorney of Holman. The purchase was made by Hall, some time before the deed was executed, and he entered into the possession of the lot, made improvements thereon, and continued to occupy it until his death. The defendant Illies has been in possession of the lot since the death of Hall.

On 9 February, 1843, William Hall "late of Galveston, Texas" filed his petition for the benefit of the bankrupt law, in the District Court of the United States for the Eastern District of Louisiana, and on 10 March following, he was declared a bankrupt. A schedule of his assets was filed, among which was the lot now in controversy. Francis B. Conrad, of the City of New Orleans, was appointed his assignee, who gave bond as required. The assignee, on application to the district court, obtained an order for the sale of the house and lot, and they were sold, in pursuance of such order, to Oakey, the plaintiff, on 18 June, 1845, to whom a deed was executed on the same day by the assignee.

Before the commencement of the suit in 1844, Hall died, and Bennett, the defendant, was appointed his administrator in Texas. Process was issued against him, and also against Illies, the person in possession, who refused to recognize the right of the plaintiff.

In his answer, Bennett avers that the petition and the matters and things therein set forth are not sufficient in law &c.;, and he prays judgment &c.; And for further answer he states that Hall departed this life before the annexation of Texas to the United States, and that administration of his estate was duly granted to the defendant. That he proceeded in the discharge of his duties, and he exhibits

accounts against the estate of Hall, by himself and other citizens of Texas, which were allowed by the probate court, amounting to the sum of \$1,811, before any conveyance of the house and lot by the assignee of Hall was set up or registered in Galveston County as the law required. And he avers that there is no property to satisfy the debts of the estate, except the house and lot in controversy.

Many points were raised, on which bills of exception were taken to the rulings of the court in the progress of the trial, but the validity of the deed of the assignee to the plaintiff is the great question in the case.

There can be no doubt, the proceedings in bankruptcy being regular and *bona fide*, that the property of the bankrupt, within

Page 52 U. S. 44

the appropriate jurisdiction, became vested by the act of Congress in his assignee. At the time of the decree of bankruptcy and until a short time before the sale and conveyance of the property in question to the plaintiff, Texas was an independent republic and in every respect a foreign state to the government of the United States.

In this country there is some diversity of opinion among the state courts whether a bankrupt law in regard to personal property, has an extraterritorial operation. That it has such operation is a doctrine which seems to be well settled in England by numerous decisions, and particularly in *Royal Bank of Scotland v. Cuthbert*, 1 Rose's Bankrupt Cases, Appendix, 462, and 2 Rose's Cases 291, in which Lord Eldon said:

"One thing is quite clear -- that there is not in any book any dictum or authority that would authorize me to deny, at least in this place, that an English commission passes, as with respect to the bankrupt and his creditors in England, the personal property he has in Scotland or in any foreign country."

It is held in England that an assignment of personal property under the bankrupt law of a foreign country passes all such property and debts owing in England; that

an attachment of such property by an English creditor, with or without notice, after such an assignment, is invalid. And the doctrine is there established that an assignment under the English bankrupt law transfers the personal effects of the bankrupt in foreign countries. But an attachment by a foreign creditor, not subject to British laws, under the local laws of a foreign country is held valid. The principle on which this doctrine rests is that the personal estate is held as situate in that country where the bankrupt has his domicile.

A statutable conveyance of property cannot strictly operate beyond the local jurisdiction. Any effect which may be given to it beyond this does not depend upon international law, but the principle of comity, and national comity does not require any government to give effect to such assignment when it shall impair the remedies or lessen the securities of its own citizens. And this is the prevailing doctrine in this country. A proceeding *in rem* against the property of a foreign bankrupt, under our local laws, may be maintained by creditors notwithstanding the foreign assignment.

But it is an admitted principle in all countries where the common law prevails, whatever views may be entertained in regard to personal property, that real estate can be conveyed only under the territorial law. The rule is laid down clearly and concisely by Sir William Grant in *Curtis v. Hutton*, 14

Page 52 U. S. 45

Ves. 537, 541, where he says "The validity of every disposition of real estate must depend upon the law of the country in which that estate is situated." The same rule prevails generally in the civil law. Boullenois, John Voet, Christinaeus, and others, cited in Story Conflict of Laws 359, 360, say, "As a general rule, movable property is governed by the law of the domicile, and real property by the law of the *situs rei*. "

This doctrine has been uniformly recognized by the courts of the United States, and by the courts of the respective states. The form of conveyance adopted by each state for the transfer of real property must be observed. This is a regulation

which belongs to the local sovereignty.

It is argued that the entire interest in the property in dispute passed, under the bankruptcy, to the assignee of Hall, and that, it being sold under the order of the district court to the plaintiff, the title is vested in him, the same as if the conveyance had been executed by Hall.

On the appointment and qualification of the assignee, the property of the bankrupt, under the act of Congress, became vested in him, for the benefit of the creditors of the bankrupt. But there was no assignment in fact made by Hall. He made application for relief under the law, and may be said to be a voluntary bankrupt, but there was no other assignment of his effects than that which resulted from the operation of the law. As, under the Constitution, Congress exercised an exclusive jurisdiction over the subject of bankruptcy, the same rule of procedure extended throughout the Union. But the act of Congress could have no extraterritorial effect. Texas was an independent republic at the time of the decree in bankruptcy, and consequently no claim under it, even as regards personal property, in that republic, could be made, except on the ground of comity. And on our own principles this could not be done, to the injury of local creditors.

Hall, in his lifetime, might have conveyed this property by observing the forms adopted by Texas. But the assignee took no legal estate in the premises under the bankrupt law, and consequently he could not convey such an estate to the plaintiff. No proposition would seem to be clearer of doubt than this. It is believed that no sovereignty has at any time assumed the power, by legislation or otherwise, to regulate the distribution or conveyance of real estate in a foreign government. There is no pretense that this government, through the agency of a bankrupt law, could subject the real property in Texas, or in any other foreign government, to the payment of debts. This can only be done by the laws of the sovereignty where such property may be situated.

It is said that Texas, by an Act of 17 March, 1841, has recognized the validity of foreign bankrupt laws. There is nothing in that act which can affect the question now under consideration. It merely provides that where relief has been given under any foreign bankrupt or insolvent law to an individual who has surrendered his property, and who afterwards shall become a citizen of Texas, he shall be considered as discharged from his debts unless fraud be shown.

But if the assignee had power to convey the property, there would be two fatal objections to the title of the plaintiff. The deed is not executed according to the form required by the laws of Texas for the conveyance of real estate. Under such an instrument, the fee does not pass. And in the second place, if the deed were operative to convey the fee, the property would be subject to satisfy the claims of the Texas creditors of Hall. Administration of his estate was granted to Bennett, who took upon himself the trust, and made returns to the court of the debts of Hall, amounting, as above stated, to the sum of eighteen hundred dollars, before he had any notice of the bankrupt proceeding. And it is averred that these creditors trusted Hall, knowing he possessed the property in controversy. Bennett, it is insisted, represents only the rights of the deceased, and, the right to this property having become divested by the decree in bankruptcy, he can set up no objection to the plaintiff's title. This position is not sustainable. The administrator represents the rights of creditors, and as regards this controversy must be considered as standing in their stead. He is responsible to the court for the faithful administration of all the assets of the deceased within the jurisdiction under which he acts. The creditors who have substantiated their claims were not subject to the decree of bankruptcy. From the property which Hall was known to possess in Texas, it is alleged they gave him credit, and a conveyance of the property, under the circumstances, could only be held valid by a disregard of the rights of the Texas creditors. This, we suppose, could not receive the sanction of the courts of that state. Whether advantage could be taken of this in the present procedure if the deed to the plaintiff conveyed the fee it is unnecessary to determine.

The annexation of Texas to the United States long after the decree of bankruptcy, and a short time before the deed by the assignee was made to the plaintiff, does

not affect the question. At the time the decree in bankruptcy was pronounced, there was no jurisdiction over this property, and the subsequent annexation cannot enlarge that jurisdiction. The rights of creditors were fixed by the decree.

Page 52 U. S. 47

We deem it unnecessary to examine the other exceptions, as we are all of the opinion, that the title to the property in controversy did not pass to the assignee, under the decree in bankruptcy. The judgment of the district court is therefore

*Affirmed.*

## **ORDER**

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

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**