

**Hampton Vs. Rouse**

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**SooperKanoon Citation :** [sooperkanoon.com/82705](http://sooperkanoon.com/82705)

**Court :** US Supreme Court

**Decided On :** 1874

**Appeal No. :** 89 U.S. 263

**Appellant :** Hampton

**Respondent :** Rouse

**Judgement :**

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**Hampton v. Rouse**

**89 U.S. (22 Wall.) 263**

*ERROR TO THE CIRCUIT COURT FOR*

*THE SOUTHERN DISTRICT OF MISSISSIPPI*

## **SYLLABUS**

1. Under a statute which enacts that the "owner," may within a time named, redeem land sold for taxes, a redemption may properly be made by a person who has been decreed a bankrupt, the lands having been his. In the case here before

the Court, there had as yet been no appointment of an assignee, nor assignment and conveyance to such person, as provided for in the fourteenth section of the Bankrupt Act of 1867, and the redemption was made between the date of the decree and of such appointment.

2. A charge that a person who had been decreed a bankrupt on his own application

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had by *such decree* ceased to be owner and had lost the right to redeem *held* to be erroneous, there having been evidence tending to show a redemption by such a person.

A valuable plantation in Mississippi belonging to Wade Hampton, and at the time in his possession, though mortgaged by him, was sold on the 11th of April, 1867, to John Rouse under a statute of the state just named, entitled "An act to incorporate the Board of Levee Commissioners &c.;" [ [Footnote 1](#) ] This act gives to this board power to assess taxes on lands such as the plantation of Hampton was, and if the taxes are not paid, to have the sheriff sell the lands.

It contains, however, this provision on the subject of redemption:

"The sheriff's deed, however, for all lands sold for taxes, shall be and remain with the probate clerk, and should the *owner or owners* of said land, their agents or attorneys, apply, they or either of them *shall be entitled to the redemption* of said land *at any time within two years of the day of sale* upon the payment of the purchase money &c.; This redemption may be made from the levee treasurer or from the probate clerk where the sheriff's deed is kept."

In this state of things, Hampton, on the 29th of December, 1868, applied for the benefit of the Bankrupt Act, and on the 17th of April, 1869, was decreed a bankrupt under it. On the 19th, an assignee in bankruptcy was appointed.

The Bankrupt Act of March 2, 1867, the now existing act and the one under which Hampton was decreed bankrupt, enacts: [ [Footnote 2](#) ]

"SECTION 11. If any person owing debts provable under this act exceeding the amount of \$300 shall apply by petition to the judge of the judicial district in which such debtor has resided, . . . setting forth his inability to pay all his debts in full, his willingness to surrender all his estate and effects for the benefit

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of his creditors, and shall annex to his petition a schedule containing a full and true statement of all his debts, . . . also an accurate inventory, . . . of all his estate, such petitioner shall be adjudged a bankrupt."

The same section of the act, at its close, further directs that the district judge in that state of the case shall issue a warrant directed to the marshal of the district authorizing him to publish notices in such newspapers as the warrant specifies, to serve written or printed notices on all creditors named in the schedule filed with the petition of the applicant, and to give such notice to all concerned as the warrant directs, which notice shall state as follows:

1. That such a warrant has been issued.
2. That the payment of debts or the delivery or transfer of property to the debtor is forbidden by law.
3. That the creditors will meet, on a day therein named, to prove their debts and choose an assignee.

The twelfth section enacts that at the meeting of the creditors, such as the preceding section contemplates, one of the registers of the district court shall preside, and that the creditors in his presence shall choose one or more assignees of the estate of the debtor.

The act then goes on in its fourteenth section thus:

"As soon as said assignee is appointed and qualified, the judge, or, where there is no opposing interest, the register, . . . shall by an instrument under his hand assign and convey to the assignee all the estate real and personal of the bankrupt, with

all his deeds, books, and papers relating thereto, *and such assignment shall relate back to the commencement of said proceedings in bankruptcy, and thereupon, by operation of law, the title to all such property and estate, both real and personal, shall vest in said assignee.* "

The Bankrupt Act of 1841 [ [Footnote 3](#) ] differed, as to the mode and time of appointing the assignee in bankruptcy, from the now existing and above-quoted act of 1867. It ran thus:

"SECTION 3. That all the property and rights of property, . . .

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of every bankrupt . . . 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 or conveyance whatsoever, and the same shall be vested by force of the same decree in such assignee as, from time to time, shall *be appointed by the proper court* for the purpose."

Hampton being still in possession of his land, Rouse now brought ejectment against him for it, and on the trial Hampton offered to prove that on the 10th day of April, 1869 -- that is to say, "within two years of the day of sale," the same having been made as above stated on the 11th of April, 1867 -- his son, as his agent, offered to redeem the land, under circumstances which made the offer equivalent to a redemption.

The son testified in substance thus:

"On the 10th of April, 1869, I went as agent of Wade Hampton to the office of Mr. Haycroft, the levee treasurer, and offered to redeem the lands in controversy. I had the means to redeem the lands. There were so many applicants waiting to redeem lands before me that I could not then be attended to. The press of business in the treasurer's office prevented my redeeming the lands when I went on the 10th of April, and that pressure continued until the time of redemption had passed."

"The means which I had were levee bonds. They were my means, and not my father's. They were in the hands of Mr. Haycroft in his office. Some of them had been converted into currency. I do not know how much. The proceeds of some of these bonds had been applied to the redemption of another estate, which was redeemed entirely out of them."

"When I applied to redeem these lands in controversy, Mr. Haycroft exhibited a map of the county to me, and it was perfectly understood between him and myself what lands I wished to redeem and also the taxes of what year. He knew at the time what means were to be used in redeeming said lands, and he made no objection, and the only reason why the lands were not then redeemed was because of the press of business in his office."

Mr. Haycroft, the levee treasurer, referred to above, testified that he occasionally sold the levee bonds, such as just

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above spoken of, as an accommodation to taxpayers, and with the proceeds paid the redemption money; that he had done so in the case of other lands for Hampton, but that it was no part of his official duty so to sell bonds and apply the proceeds; that in this case he had told Hampton's son that he would have to pay in currency. He added, however, that the applications for redemption on the 10th of April, 1869, were so numerous that he could not on that day have attended to the redemption of these lands under any circumstances, and that on the 11th, the time expired.

The court charged the jury,

"That Wade Hampton, having been adjudged a bankrupt on his own application, after the land was sold for the taxes, had thereby ceased to be the owner of the land, and had lost the right to redeem."

And this charge was assigned for error.

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MR. JUSTICE CLIFFORD delivered the opinion of the Court.

It appears by the record that the offer to redeem was made by the agent of the owner on the 10th of April, 1869, less than two years from the sale. This was within proper time as allowed by law.

It is clear that a decree in bankruptcy, without more, will not, under the Bankrupt Act, which in the first part of its eleventh section provides for the decree, have the effect to discharge the debts of the petitioner nor to divest him of the title to either his real or personal estate. And argument is hardly necessary to show that none of the proceedings contemplated in any part of the eleventh section, or those directed in the twelfth, have that effect, as neither of the sections contains any language whatever to import or indicate that anything of the kind was intended by the framers of the act.

Conclusive support to this view, if any be needed, is derived from the fourteenth section of the act. Prior to the assignment and conveyance authorized and directed by that section, the title, whatever it be, of the estate belonging to the debtor, both real and personal, remains unchanged except that the court in certain cases may in the meantime restrain the debtor or any other person by injunction from making any transfer or disposition of any part of the same not excepted from the operation of the act.

Sufficient appears in the sections of the act referred to, when considered in connection with the admissions and other evidence exhibited in the record, to show beyond doubt that the instruction of the court under discussion is erroneous and that the error was of a character to supersede every question of fact submitted to the jury.

Plenary evidence was given that the offer to redeem, as

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exhibited in the transcript, was made on the 10th of April, 1869, and the assignee of the estate of the bankrupt was not appointed and qualified as such until the 19th

of April in the same year, and the testimony reported shows that the bankrupt was in the possession of the premises and that he ever after continued in the possession of the same to the present time.

Whether or not the evidence introduced to prove that an offer to redeem the premises was made at the time was sufficient to avail the defendant as equivalent to a tender, it is not necessary at the present time to decide, but the Court is of the opinion that it was of such a character, in view of a recent decision of this Court, that it ought to have been submitted to the jury, untrammelled by a prior instruction, which in substance and effect amounted to a direction to the jury that their verdict must be for the plaintiff.

Such an offer to redeem it was held, in the case of *Bennet v. Hunter*, [ [Footnote 4](#) ] might be made by the owner or by an agent or by any person willing to act for the party interested, upon the ground that an act done by a third person for the benefit of another is valid if ratified either expressly or by implication, and that such ratification will be presumed in furtherance of justice. Since that time, it has also been decided, in the case of *Tracy v. Irwin*, [ [Footnote 5](#) ] that if the tax commissioners announce that they will not receive the payment of the taxes in such cases unless tendered by the owner, that a formal offer by another to pay is unnecessary, that it is enough if a relative of the owner went to the office of the commissioners to see after the payment of the tax, even though he made no formal offer to pay, because such an announcement is in effect a waiver of a tender by the commissioners, they having declined to receive payment unless the tender is made by the owner in person.

Apply that rule to the case and it is clear that the evidence introduced by the defendants tending to show an offer to redeem the premises should have been submitted to the

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jury under proper instructions. Instructions of the kind, however, would have been useless after the jury had been told that the defendant ceased to be the owner of

the land and that he lost his right to redeem the same when he was adjudged a bankrupt, it appearing that the decree was entered before the offer to redeem was made, as assumed by both parties.

Enough appears in the language of the fourteenth section of the Bankrupt Act to demonstrate the proposition that the instruction of the circuit court in that regard was incorrect, nor is the question affected in the least by the fact that the same section provides that such assignment or conveyance shall relate back to the commencement of the proceedings, as the instrument of assignment cannot operate either retrospectively or prospectively before it is executed. Until an assignee is appointed and qualified and the conveyance or assignment is made to him, the title to the property, whatever it be, remains in the bankrupt, which is the plain meaning of the fourteenth section of the Bankrupt Act. [ [Footnote 6](#) ] Different regulations in that respect were enacted in the former Bankrupt Act, as the third section of that act provided that

"All the property and rights of property, of every name and nature, of the bankrupt, not excepted from the operation of the 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. [ [Footnote 7](#) ]"

Unlike the old act, the existing act makes it the duty of the court, or, where there is no opposing interest, of the register, by an instrument under his hand, to assign and convey to the assignee all the estate, real and personal, of the bankrupt, and the rule is that such a conveyance or assignment divests the bankrupt of the whole of his property, except what is exempted from the operation of the Bankrupt Act, and vests the title to the same in the assignee, but the record in this case shows that

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no assignee had been appointed when the alleged offer to redeem was made, which affords a demonstration that the charge of the court that he had ceased to

be the owner of the land and thereby lost his right to redeem was improper, being equivalent to a direction to the jury to find a verdict for the plaintiff. [ [Footnote 8](#) ]

*Judgment reversed and the cause remanded with directions to issue a new venire.*

[ [Footnote 1](#) ]

Laws of Missouri for 1865, p. 60.

[ [Footnote 2](#) ]

15 Stat. at Large 522.

[ [Footnote 3](#) ]

5 Stat. at Large 443.

[ [Footnote 4](#) ]

[76 U. S. 9](#) Wall. 338.

[ [Footnote 5](#) ]

[85 U. S. 18](#) Wall. 550.

[ [Footnote 6](#) ]

*Sutherland v. Davis*, 42 Ind. 28.

[ [Footnote 7](#) ]

5 Stat. at Large 443; *Ex Parte Newhall*, 2 Story 362; [Oakey v. Bennett](#), 11 How. 44.

[ [Footnote 8](#) ]

*Wright v. Johnson*, 4 N.B.R. 627; Same Case, 8 Blatchford 150; Bump on Bankruptcy (7th ed.) 22.

