

**Thomas Vs. Sugarman**

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**Court :** US Supreme Court

**Decided On :** May-31-1910

**Appeal No. :** 218 U.S. 129

**Appellant :** Thomas

**Respondent :** Sugarman

**Judgement :**

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U.S. Supreme Court Thomas v. Sugarman, 218 U.S. 129 (1910)

**Thomas v. Sugarman**

**No. 131**

**Argued April 12, 1910**

**Decided May 31, 1910**

**218 U.S. 129**

*APPEAL FROM THE CIRCUIT COURT OF APPEALS*

*FOR THE SECOND CIRCUIT*

## SYLLABUS

Where the trustee in bankruptcy brings a bill in equity in the Circuit Court to set aside a transfer made by the bankrupt, the appeal is not governed by 25 of the Bankruptcy Act but by the Court of Appeals Act of March 3, 1891, c. 517, 6, 26 Stat. 828. *Knapp v. Milwaukee Trust Co.*, [216 U. S. 545](#) .

The rule that an act of election directed toward a third person may operate *in rem* and establish title as to all concerned does not apply where, as in this case, the title is in the person enforcing the remedies, and there was no element of election.

The fact that a trustee in bankruptcy obtained a money judgment against one to whom the bankrupt transferred certain assets to delay and defraud creditors *held* in this case not to have amounted to ratification of the bankrupt's act or to an election not to pursue the assets transferred, but the bankrupt was entitled to also maintain a bill in equity to set aside the transfer.

157 F. 669 reversed.

The facts are stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

This is a bill in equity brought by a trustee in bankruptcy to set aside a transfer of accounts and bills receivable, made by the bankrupt to the defendant, Sugarman, with intent to delay and defraud creditors. Sugarman pleaded in bar that the plaintiff had ratified his dealings because, with knowledge of all the facts, the plaintiff had taken a judgment against the bankrupt for \$17,500, a part or all of which was money remaining in the bankrupt's hands of \$30,000, alleged by the bill to have been paid to him by Sugarman in pursuance of the fraudulent scheme. A majority of the circuit court of appeals held the ratification made out on the ground that, to get the judgment, the trustee had to rely upon a right inconsistent with that now set up. 157 F. 669. The plaintiff appealed to this Court.

It is argued that the appeal was too late because not taken within thirty days after the decree, as required by

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General Orders in Bankruptcy No. 36, for appeals under the act. But this is not an appeal under the act, 25, by authority of which the general order was adopted, and is not governed by that order. The appellate jurisdiction is under or is the same as that under the Court of Appeals Act of March 3, 1891, c. 517, 6, 26 Stat. 828. *Knapp v. Milwaukee Trust Co.*, March 7, 1910, [216 U. S. 545](#) . The appeal was taken within a year, and was in time.

On the merits, we are of opinion that the decision was wrong. We are quite ready to assume what the court below was at some trouble to establish that an act of election directed toward a third person may operate *in rem* and establish title as to all parties concerned. But the demand of the trustee on the bankrupt, even when enforced by a resort to the courts and by judgment, had no element of election about it. The legal title to the money had been in the bankrupt, and was transferred by the statute to the trustee, 70. He was entitled to have that money in his hands as against the bankrupt in any event, whether he decided to hand it back to Sugarman or to distribute it in dividends. The law had put him in the bankrupt's shoes with additional powers. Therefore to insist that the bankrupt should do what the statute required him to do was as consistent with a subsequent rescission of the bankrupt's fraudulent acquisition of title as with an affirmance of it. It had no relation to that question, except possibly to put the plaintiff in a position better to decide it.

*Decree reversed.*