Johnson Vs. Collier

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Court : US Supreme Court

Decided On : Jan-09-1912

Appeal No. : 222 U.S. 538

Appellant : Johnson

Respondent : Collier

Judgement :

Johnson v. Collier - 222 U.S. 538 (1912)
U.S. Supreme Court Johnson v. Collier, 222 U.S. 538 (1912)

Johnson v. Collier

No. 104

Argued December 14, 15, 1911

Decided January 9, 1912

222 U.S. 538

ERROR TO THE SUPREME COURT

OF THE STATE OF ALABAMA

SYLLABUS

The bankrupt is not divested of his property by filing a petition in bankruptcy. He is still the owner, holding in trust, pending the appointment and qualification of the trustee, whose title then relates back to the date of adjudication.

Until the election of the trustee, the bankrupt may institute and maintain a suit on any cause of action possessed by him.

161 Ala. 204. affirmed.

M. B. Johnson, as executor, recovered judgment against B. T. Collier in the City Court of Gadsden, Ala. Execution thereon was levied July 20, 1906, on certain personal property.

Under a provision of the Alabama statute, Collier immediately filed with the sheriff a claim of exemption. On the same day he filed, in the proper district court of the United States, a voluntary petition in bankruptcy, including this property in his schedule of assets. Notwithstanding the claim of exemption, the sheriff sold the property at public outcry on July 30, 1906.

Thereafter, on a date not shown by the record, Collier was adjudicated a bankrupt. On August 8, 1906, before a trustee was elected, he brought suit against both Johnson and the sheriff for damages on the theory that the sale of the property after the filing of the claim of exemption made them trespassers *ab initio.* The defendants filed a plea in which they set up the pendency of the bankruptcy proceedings and alleged that Collier had no title to the cause of action which was *in gremio legis* until the election of the trustee, and for that reason he could not maintain a suit

Page 222 U. S. 539

for damages occasioned by the unlawful sale of property included in the schedule of assets. A demurrer to this plea was sustained. The jury found a verdict in favor of Collier, which the trial court refused to set aside. This ruling was affirmed, and

the case is here on a writ of error from that judgment of the Supreme Court of Alabama.

MR. JUSTICE LAMAR, after making the foregoing statement, delivered the opinion of the Court.

The trustee, with the approval of the court, may prosecute any suit commenced by the bankrupt prior to the adjudication. (11c.) But the statute is otherwise silent as to the right of the bankrupt himself to begin a suit in the time which intervenes between the filing of the petition and the election of the trustee. There is a conflict in the conclusions reached in the few cases dealing with this question. *Rand v. Sage,* 94 Minn. 344; *Rand v. Iowa Central R. Co.,* 186 N.Y. 58; *Gordon v. Mechanics' Insurance Co.,* 120 La. 444.

While for many purposes the filing of the petition operates in the nature of an attachment upon choses in action and other property of the bankrupt, yet his title is not thereby divested. He is still the owner, though holding in trust until the appointment and qualification of the trustee, who thereupon becomes "vested by operation of law with the title of the bankrupt" as of the date of adjudication. (70.)

Until such election, the bankrupt has title -- defeasible, but sufficient to authorize the institution and maintenance of a suit on any cause of action otherwise possessed by him. It is to the interest of all concerned that this should be so.

Page 222 U. S. 540

There must always some time elapse between the filing of the petition and the meeting of the creditors. During that period, it may frequently be important that action should be commenced, attachments and garnishments issued, and proceedings taken to recover what would be lost if it were necessary to wait until the trustee was elected. The institution of such suit will result in no harm to the estate. For if the trustee prefers to begin a new action in the same or another court, in his own name, the one previously brought can be abated. If, however, he is of opinion that it would be to the benefit of the creditors, he may intervene in the suit commenced by the bankrupt and avail himself of rights and priorities thereby

acquired. *Thatcher v. Rockwell,* 105 U. S. 469 .

If, because of the disproportionate expense or uncertainty as to the result, the trustee neither sues nor intervenes, there is no reason why the bankrupt himself should not continue the litigation. He has an interest in making the dividend for creditors as large as possible, and in some states the more direct interest of creating a fund which may be set apart to him as an exemption. If the trustee will not sue and the bankrupt cannot sue, it might result in the bankrupt's debtor being discharged of an actual liability. The statute indicates no such purpose, and if money or property is finally recovered, it will be for the benefit of the estate. Nor is there any merit in the suggestion that this might involve a liability to pay both the bankrupt and the trustee. The defendant in any such suit can, by order of the bankrupt court, be amply protected against any danger of being made to pay twice. *Rand v. Iowa Central R. Co.,* 186 N.Y. 58; *Southern Express Co. v. Connor,* 49 Ga. 415.

There was no error in holding that the bankrupt had title to the cause of action and could institute and maintain suit thereon.

Affirmed.