

Everett Vs. Judson

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Court : US Supreme Court

Decided On : Apr-28-1913

Appeal No. : 228 U.S. 474

Appellant : Everett

Respondent : Judson

Judgement :

Everett v. Judson - 228 U.S. 474 (1913)

U.S. Supreme Court Everett v. Judson, 228 U.S. 474 (1913)

Everett v. Judson

No. 595

Argued March 13, 1913

Decided April 28, 1913

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CERTIORARI TO THE CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT

SYLLABUS

Burlingham v. Crouse, ante, p. [229 U. S. 459](#) , followed to effect that, under 70a of the Bankruptcy Act, the trustee only takes surrender value of insurance policies on the bankrupt's life, or, in case loans have been made by the company issuing the policies, only the excess of surrender value over the amount of the loan.

Under 70a of the Bankruptcy Act, the bankrupt is entitled to the policy by paying the amount of the cash surrender value or excess thereof over loans as of the date of the filing of the petition, and in case of the maturity of the policy before the adjudication, he or his legal representative is entitled to the proceeds of the policy over and above such amount.

Congress, by the proviso in 70a, fixed the date of filing the petition as the line of cleavage as between the trustee and the bankrupt in regard to life insurance policies, and this is not affected by subsequent events such as the maturity of the policy by the suicide of the bankrupt, even though prior to adjudication.

192 F. 834 affirmed.

The facts, which involve the construction of 70a of the Bankruptcy Act and the ownership of policies of

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insurance on the life of a bankrupt, are stated in the opinion.

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MR. JUSTICE DAY delivered the opinion of the Court.

This case involves the title to the proceeds of certain insurance policies upon the life of Alfred M. Judson, bankrupt, deceased, collected by the trustee in bankruptcy. The executor of Judson's estate brought suit against the trustee in the United States District Court for the Southern District of New York, asserting title to

such funds. The district court ordered that the proceeds of the policies, less their cash surrender value, be paid to the executor (188 F. 702); the Circuit Court of Appeals for the Second Circuit, upon petition to revise, affirmed that order (192 F. 834), and the case comes here on certiorari.

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A petition in involuntary bankruptcy was filed against the firm of Judson & Judson and its members, Alfred M. Judson being one, on December 17, 1910, and on December 23, 1910, Judson entered a notice of his appearance in the proceedings. On January 9, 1911, the firm and its members were adjudged bankrupts, and on February 9, 1911, Everett qualified as trustee. Judson owned certain life insurance policies at the time of the institution of the bankrupt proceedings, and thereafter and until his death, payable to his executors, administrators, or assigns. So far as this case is concerned at the time of the filing of the petition in bankruptcy, these policies, with cash surrender values and subject to loans, were as follows: one policy for \$5,000, having a cash surrender value of \$2,291.49, and subject to a loan of \$2,238; another for \$1,000, having a cash surrender value of \$332.31, and subject to a loan of \$322, and another for \$10,000, having a cash surrender value of \$5,030, and subject to a loan of \$5,240. It therefore appears that the cash surrender value of the policies on December 17, 1910, was \$63.80.

On January 4, 1911, Judson committed suicide. Notice was served on the trustee that the executor claimed the right, under 70a of the Bankruptcy Act, to pay to the trustee the cash surrender value of the policies when ascertained, but the trustee denied such right and also the right of the executor to the balance of the proceeds of the policies. Under agreement, the insurance companies paid to the trustee \$8,675.14 upon the policies. The executor asserted title to the difference between the sum realized on the policies and the cash surrender value -- namely, \$8,611.34. The district court, upon the authority of *Burlingham v. Crouse*, 181 F. 479, held that the proceeds of the policies, over and above the cash surrender value as of the date of the filing of the petition, passed to the executor. The circuit

court of appeals affirmed the order of the district court, holding that the

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time when the interest of the bankrupt estate in the policies passed to the trustee was the date of the filing of the petition, and further, also upon the authority of *Burlingham v. Crouse, supra*, that the interest of the trustee in the policies extended only to their cash surrender value.

The present case was argued at the same time as the case of *Burlingham v. Crouse, ante*, p. [229 U. S. 459](#), and insofar as it is like that case, the principles therein laid down are controlling. The present case has, however, a feature not directly involved in the case of *Burlingham v. Crouse*, because Judson, the insured, committed suicide before the adjudication in bankruptcy, although after the filing of the petition, and it is the contention of the petitioner that the Bankruptcy Act vested the title to the property in the trustee as of the time of the adjudication, and that the death of the bankrupt between the filing of the petition and the date of the adjudication made the proceeds of the policies assets in the hands of the trustee.

While it is true that 70a provides that the trustee, upon his appointment and qualification, becomes vested by operation of law with the title of the bankrupt as of the date he was adjudged a bankrupt, there are other provisions of the statute which, we think, evidence the intention to vest in the trustee the title to such property as it was at the time of the filing of the petition. This subject was considered in *Acme Harvester Co. v. Beekman Lumber Co.*, [222 U. S. 300](#), wherein it was held that, pending the bankrupt proceedings, and after the filing of the petition, no creditor could obtain by attachment a lien upon the property which would defeat the general purpose of the law to dedicate the property to all creditors alike. Section 70a vests all the property in the trustee which, prior to the filing of the petition, the bankrupt could by any means have transferred, or which might have been levied upon and sold under judicial process against him. The

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bankrupt's discharge is from all provable debts and claims which existed on the day on which the petition for adjudication was filed. *Zavelo v. Reeves*, [227 U. S. 625](#) , [227 U. S. 630](#) -631. The schedule that the bankrupt is required to file, showing the location and value of his property, must be filed with his petition.

We think that the purpose of the law was to fix the line of cleavage with reference to the condition of the bankrupt estate as of the time at which the petition was filed, and that the property which vests in the trustee at the time of adjudication is that which the bankrupt owned at the time of the filing of the petition. And it is as of that date that the surrender value of the insurance policies mentioned in 70a should be ascertained. The subsequent suicide of the bankrupt before the adjudication was an unlooked-for circumstance which does not change the result in the light of the construction which we give the statute.

It follows that the judgment should be

Affirmed.