**Van Huffel Vs. Harkelrode**

**Van Huffel Vs. Harkelrode**

**SooperKanoon Citation** : sooperkanoon.com/95336

**Court** : US Supreme Court

**Decided On :** Dec-07-1931

**Appeal No.** : 284 U.S. 225

**Appellant** : Van Huffel

**Respondent** : Harkelrode

**Judgement** :

Van Huffel v. Harkelrode - 284 U.S. 225 (1931)
U.S. Supreme Court Van Huffel v. Harkelrode, 284 U.S. 225 (1931)

**Van Huffel v. Harkelrode**

**Nos. 54-and 55**

**Argued October 28, 1931**

**Decided December 7, 1931**

**284 U.S. 225**

*CERTIORARI TO THE COURT OF APPEAL OF TRUMBULL COUNTY*

*AND TO THE SUPREME COURT OF OHIO*

## SYLLABUS

1. The bankruptcy courts have power to sell real estate of bankrupts free from liens of state taxes, transferring the liens from the property to the proceeds of sale. P. 284 U. S. 227 .

2. Objections that the notice given the state treasurer in this case was insufficient and that the proceeding to determine priority of liens should have been plenary, rather than summary, *held* not open in this Court, not having been made in, or discussed by, the courts below. P. 284 U. S. 229 .

3. A decision of a state supreme court dismissing a petition in error as of right to review a judgment of an intermediate court, upon the ground that the constitutional question raised, and upon which the jurisdiction of the higher court depended, was not debatable, is a decision of the merits, so that a writ of certiorari from this Court should go to the supreme court if it has the record, and not to the intermediate court. P. 284 U. S. 230 .

4. In reviewing the judgment of a state supreme court, a transcript of the record in that court, certified by its clerk and filed here with the petition for certiorari is, by Rule 43, to be treated as sent up in response to a formal writ, and in such case there is no occasion to direct a writ to the intermediate state court to which, under the rules of the state supreme court, the record may have been returned. P. 284 U. S. 230 .

123 Oh.St. 674, 177 N.E. 587, reversed.

Certiorari, 283 U.S. 817, to review a judgment of the Supreme Court of Ohio, which, by declining to review, in effect affirmed on the merits a judgment of the Court of Appeals of the state, which had reversed a decree quieting



title to land against a tax lien asserted by a county treasurer. This Court granted certiorari to both the appellate courts, but the writ sent to the Court of Appeals is

now discharged. Of the transcripts filed here in support of the respective petitions, one was certified by the clerk of the court of appeals, and the other, six days later, by the clerk of the supreme court of the state.

MR. JUSTICE BRANDEIS delivered the opinion of the Court.

Van Huffel brought this suit in the Court of Common Pleas of Trumbull County, Ohio, to quiet his title to two parcels of real estate acquired from the purchaser at a sale made by the bankruptcy court for that district. The defendant, the county treasurer, asserts a lien for unpaid state taxes which had accrued prior to the bankruptcy. The sale was made pursuant to an order of the bankruptcy court which directed that all liens be marshaled; that the property be sold free of all incumbrances, and that the rights of all lienholders be transferred to the proceeds of the sale. The trial court entered a decree quieting the title. Its judgment was reversed by the court of appeals of the county. The supreme court of the state declined to review the case. 177 N.E. 587. This Court granted certiorari. 283 U.S. 817.

Section 5671 of the Ohio General Code provides:

"The lien of the state for taxes levied for all purposes, in each year, shall attach to all real property subject to such taxes

Page 284 U. S. 227

on the day preceding the second Monday of April, annually, and continue until such taxes, with any penalties accruing thereon, are paid."

The bankruptcy court, having held two mortgages executed by the bankrupt to be prior in lien to the taxes, applied all of the proceeds of the sale toward the satisfaction of one of them, and left the state taxes unpaid. The treasurer did not, by any proceeding in that court, question the propriety of such action. Van Huffel admits that the decision of the bankruptcy court was erroneous in denying priority to the taxes, but insists that it is *res judicata.* The treasurer contends that the judgment of the bankruptcy court authorizing and confirming the sale free from the

tax lien is a nullity, because the court was without power to sell property of the bankrupt free from the existing lien for taxes, and also because it did not acquire jurisdiction over the state in that proceeding.

*First.* The present Bankruptcy Act (July 1, 1898, 30 Stat. 544, c. 541), unlike the Act of 1867, [ Footnote 1 ] contains no provision which in terms confers upon bankruptcy courts the power to sell property of the bankrupt free from incumbrances. We think it clear that the power was granted by implication. Like power had long been exercised by federal courts sitting in equity when ordering sales by receives or on foreclosure. [ Footnote 2 ] *First National Bank v. Shedd,* 121 U. S. 74 , 121 U. S. 87 ; *Mellen v. Moline Malleable Iron Works,* 131 U. S. 352 , 131 U. S. 367 . The lower federal courts have consistently held that the bankruptcy court possesses the

Page 284 U. S. 228

power, stating that it must be implied from the general equity powers of the court and the duty imposed by 2 of the Bankruptcy Act to collect, reduce to money, and distribute the estates of bankrupts, and to determine controversies with relation thereto. [ Footnote 3 ]

No good reason is suggested why liens for state taxes should be deemed to have been excluded from the scope of this general power to sell free from incumbrances. Section 64 of the Bankruptcy Act grants to the court express authority to determine "the amount or legality" of any tax. To transfer the lien from the property to the proceeds of its sale is the exercise of a lesser power, and legislation conferring it is obviously constitutional. Realization upon the lien created by the state law must yield to the requirements of bankruptcy administration. *Compare International Shoe Co. v. Pinkus,* 278 U. S. 261 ; *Isaacs v. Hobbs Tie & Timber Co.,* 282 U. S. 734 ; *Straton v. New,* 283 U. S. 318 . In many of the cases in the lower federal courts, the order of sale entered was broad enough to authorize a sale free from tax liens as well as from others, [ Footnote 4 ] and, in some of them, it appears affirmatively that liens for taxes were treated as discharged by the order. [ Footnote 5 ]

Page 284 U. S. 229

No case has been found in which the power to sell free from the lien of state taxes was denied.

*Second.* The treasurer contends that the order authorizing a sale free from incumbrances was void as against the state for lack of notice and opportunity to be heard. He asserts that he had no knowledge of the ruling of the court determining the priority of the liens; that neither he nor his counsel, the prosecuting attorney, was present at any of the proceedings, and that the notice of the public sale, mailed to him after the order of sale had been made by the referee, did not state that the property was to be sold "free and clear of encumbrances." But it appears that, prior to any action by the court, notice of the filing of the application to sell free and clear of incumbrances was mailed to the treasurer, and that thereafter he mailed to the referee a statement of the taxes due. It is urged that such notice was insufficient, and also that a proceeding to determine the priority of liens is plenary, whereas the order now complained of was entered in a summary proceeding. *Compare* 90 U. S. *Norseworthy,* 23 Wall. 128. We have no occasion to pursue the argument. So far as appears, neither of these objections was made by the treasurer below, nor were they discussed by any of the state courts. They cannot, therefore, be urged here. *Compare Peck v. Heurich,* 167 U. S. 624 , 167 U. S. 628 -629; *Virginian Ry. Co. v. Mullens,* 271 U. S. 220 , 271 U. S. 227 -228; *New York v. Kleinert,* 268 U. S. 646 , 268 U. S. 650 .

Page 284 U. S. 230

*Third.* There remains for consideration a question of practice. After the adverse judgment in the Court of Appeals, Van Huffel filed in the Supreme Court of Ohio a petition in error as of right, claiming that a constitutional question was involved, and he filed there also a motion requesting that the Court of Appeals be directed to certify its record for review. The Supreme Court dismissed the petition in error on the ground that no debatable constitutional question was involved, and it overruled the motion to certify the record for review. An application for rehearing was denied

as to both. Van Huffel filed two petitions for certiorari, one (No. 54) directed to the Court of Appeals, the other (No. 55) directed to the Supreme Court. He states that he did this because he was uncertain to which of the state courts the certiorari from this Court should be directed.

The question which we have discussed is a federal constitutional question. The Constitution of Ohio, Article IV, 2, confers upon the supreme court of the state "appellate jurisdiction in all cases involving questions arising under the Constitution of the United States or of this state." The order of the supreme court dismissing the petition in error as of right, on the ground that no debatable constitutional question was involved, was not, in law, a dismissal of the petition for want of jurisdiction. It was a decision of the case on the merits. *Hetrick v. Village of Lindsey,* 265 U. S. 384 , 265 U. S. 386 ; *Matthews v. Huwe,* 269 U. S. 262 , 269 U. S. 265 . Under the federal practice, a writ of certiorari would therefore have to be directed to that court if it had possession of the record to be reviewed. *Atherton v. Fowler,* 91 U. S. 143 , 91 U. S. 146 . The petition in error as of right was necessarily accompanied by a transcript of the final record in the court of appeals. Ohio General Code, 12263. It is suggested in the brief for the treasurer, however, that such record went out of the possession of the supreme court after it dismissed

Page 284 U. S. 231

the petition in error and denied the motion for certiorari, and in support of this allegation we are referred to rule IX of the Supreme Court, 122 O.S. lxxii, which provides for the return of the record to the lower court "after the decision of a cause . . . in which a final record is not required to be made in" the supreme court. But we have obtained the record from the court whose decision we are to review, and so have no occasion to resort to any other court in order to get it. *Atherton v. Fowler, supra.* Our Rule 43 provides that the certified transcript of the record on file here shall be treated as though sent up in response to a formal writ. The case at bar should therefore properly be considered on the writ (in No. 55) issued to the Supreme Court of Ohio, and the writ (in No. 54) issued to the court of appeals should be discharged.

*In No. 55, judgment reversed.*

*In No. 54, writ of certiorari discharged.*

[ Footnote 1 ]

Act of March 2, 1867, 14 Stat. 517, c. 176, 1, 20; *Ray v. Norseworthy,* 23 Wall. 128, 90 U. S. 134 . *See,* as to Act of August 19, 1841, 5 Stat. 440, c. 9, *Houston v. City Bank of New Orleans,* 6 How. 486, 47 U. S. 504 .

[ Footnote 2 ]

*Compare City of New Orleans v. Peake,* 52 F. 74, 76; *Mercantile Trust Co. v. Tennessee Cent. R. Co.,* 294 F. 483, 485-486; *Murray Rubber Co. v. Wood,* 11 F.2d 528; *Broadway Trust Co. v. Dill,* 17 F.2d 486; *Seaboard Nat. Bank v. Rogers Milk Products Co.,* 21 F.2d 414, 416.

[ Footnote 3 ]

*See, e.g., In re Pittelkow,* 92 F. 901, 902; *Southern Loan & Trust Co. v. Benbow,* 96 F. 514, 527, *reversed on other grounds,* 99 F. 707; *In re Union Trust Co.,* 122 F. 937, 940; *In re Keet,* 128 F. 651; *In re Harralson,* 179 F. 490, 492; *In re E. A. Kinsey Co.,* 184 F. 694, 696; *In re Roger Brown & Co.,* 196 F. 758, 761; *In re Hasie,* 206 F. 789, 792; *In re Codori,* 207 F. 784; *In re Franklin Brewing Co.,* 249 F. 333, 335; Gantt v. Jones, *272 F. 117, 118; In re Theiberg,* 280 F. 408, 409; *In re Gimbel,* 294 F. 883, 885; *In re King,* 46 F.2d 112, 113.

[ Footnote 4 ]

*Compare In re New York & Philadelphia Package Co.,* 225 F. 219, 222; *In re Gerry,* 112 F. 958, 959.

[ Footnote 5 ]

*In re National Grain Corp.,* 9 F.2d 802, 803; *Delahunt v. Oklahoma County,* 226 F. 31, 32; *In re New York & Philadelphia Package Co.,* 225 F. 219, 222; *In re Reading Hat Mfg. Co.,* 224 F. 786, 789-790; *In re Torchia,* 185 F. 576, 578, 584;

*In re Kohl-Hepp Brick Co.,* 176 F. 340, 342; *In re Prince & Walter,* 131 F. 546, 549; *Matter of Hilberg,* 6 A.B.R. 714, 717. *Compare Dayton v. Stanard,* 241 U. S. 588 , 241 U. S. 589 , *aff'g,* 220 F. 441; *In re Florence Commercial Co.,* 19 F.2d 468, 469; *In re Stamps,* 300 F. 162, 163; *In re Tri-State Theaters Corp.,* 296 F. 246; *C. B. Norton Jewelry Co. v. Hinds,* 245 F. 341, 343; *In re Haywood Wagon Co.,* 219 F. 655, 657; *In re Crowell,* 199 F. 659, 661; *In re Vulcan Foundry & Machine Co.,* 180 F. 671, 675; *In re Keller,* 109 F. 131, 134. *See also Little v. Wells,* 29 F.2d 1003; *Heyman v. United States,* 285 F. 685, 688.