

No. 13196

Supreme Court of Illinois

Holbrook

vs.

Coney et al

71641  7

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 37.

Holbrook
vs

~~Wentworth~~

Money

1861

Edmund S Holbrook

37

W

—

William Conroy &

Benj S Prettyman

} Error to Tagwell
Experiment.

The case to be taken up is

Emma S. Holbrook

^{vs}
John Vickel &
Benjamin P. Prettyman }

Yours &c

James Roberts

Writ of Error in this case
from Tazewell Co. direct to
to James Roberts, Pekin. by letter
immediately. Need not issue *seire*
facias to the clerk - only summons
to defendants.

W.R.

427 : 37

Edmund S. Holbrook

27

John Stokol chal.

Recipe

Filed Apr. 32 1860.
S. Deland
Clk.

\$5.00
to
the
order
of
the
court

In the Supreme Court
of Illinois, 3^d Grand Divis-
ion April Term 1861.

Edmund S. Holbrook

No 37

vs
William Henry B. P. Pettyman
Extrajudicial.

E. S. Holbrook,
plaintiff, being duly sworn
says that the record filed
in this cause is not cor-
rect. in this: That what
purports to be a copy of
a decree in bankruptcy, en-
tered in the matter of
James B. Campbell in the
District Court of the Uni-
ted States for the District of
Illinois, and the certificate
thereto attached, on pages
37, 38, 39, & 40 of said record
does not belong to said rec-
ord. But in the place
thereof there belongs a certi-
fied copy of a decree in
said cause in bankruptcy
with the certificate of the
clerk of said court, in

words and figures following to wit:

"District Court
" ~~of the~~ United States, Northern
" District of Illinois.

The decree declaring
James B Campbell a bankrupt
and appointing William
Bostwick ^{the} assignee of
said bankrupt, is found in
the bankrupt record of the
District Court of the United
States for the District of Illi-
nois under the date of "Oct.
3^d 1842" and Case number
919. - and is in the words
and figures following to wit:

"Oct. 3^d 1842.

919 In the matter
of the petition of James
B Campbell to be declared
a bankrupt and to be dis-
charged from his debts. -
On hearing the petition of
the said James B Campbell
filed in this Court on the
- day of - A.D. 184- pray-

ing to be declared a bankrupt, in pursuance of an act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States" and it appearing satisfactorily to the Court that notice has been published in pursuance of the previous order of this Court and no sufficient cause being shown to the contrary: It is therefore ordered, adjudged and decreed that the said James B. Campbell be deemed a bankrupt within the purview of said act, and it is further ordered and adjudged that William C. Postwick of the County of D. Darriss be and hereby is appointed assignee of said bankrupt upon his entering into before a commissioner and filing with a clerk of this Court a bond in the penal sum

— dollars to the United States with two or more sureties to be approved by the Commissioner of the County where the bankrupt resides. Conditions for the due and faithful discharge of all his duties as such assignee and his compliance with the orders and directions of the Court.

On motion of Purple and Merriam Esqs for petitioner ordered that cause be shown before the Court on the 1st day of Feb. next. at 9 o'clock A. M. why James B Campbell should not receive his discharge and certificate as a bankrupt and that notice thereof be published 70 days previous thereto as required by rule No 17. of this Court

James F. Swings Clk.

Northern District of Illinois
J. William H. Bradley Clerk of
the District Court of the

United States for the Northern District of Illinois do hereby certify the foregoing transcript to be a true and correct copy from the Record of "Bankrupt Decrees" in the District Court of the United States for the District of Illinois of the decree of date of Oct. 3rd 1842 declaring James B Campbell a bankrupt and appointing Wm C Brstwick assignee of the same - and also of the rule in bankruptcy number fifty one as prescribed by said Court - as the same remain of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said District Court for the Northern District of Illinois at my office in Chicago in said Northern District. This twenty seventh day of September in the year of our Lord One

thousand eight hundred
and fifty nine. and of
our Independence the
84th year.

Wm A Brady Clerk

Scab

Affiant says that this
error in said record
occurred in this wise:

Before ^{in the court below} the trial of this
cause, affiant left in the
hands of James Roberts Esq
of Pekin ^{his attorney}, both of said
certified copies: that ~~the~~
~~latter~~ said Roberts tried
said cause, and used
in evidence said second
copy (the one not inserted
in said record), but in
making up the Bill of
exceptions did not
leave a copy of the paper
on file with the clerk
but simply directed as
is usual in practice, the
clerk to insert copy - that
affiant was not present

at such trial: that after
 said trial affiant obtain-
 ed said second certified
 copy from said Roberts
 for use in a suit of his be-
 fore Judge Norton at Wile
 Circuit Court about
 Dec. 1860, used it in a case
 tried by said Judge, ^{without applying} that
 said Judge took the case
 under advisement, and
 kept the paper as evidence
 in that case. And affiant
 expected to obtain the
 same at the March term
 of said ^{court}, about the 4th
 Monday of March.

Affiant says that said
 Roberts caused this record
 to be made up, and by
 mistake, want of recollec-
 tion or otherwise, affiant
 does not know, but sup-
 poses from the fact that
 the two copies were en-
 dorsed alike, supplied
 the clerk with the first
 copy, and sent said second

to affiant before he had
obtained the proper copy.
Affiant discovered said
mistake and ^{went} immedi-
ately to solicit the 4th week
of March while said Will
Court was in session, to
receive the decision of Judge
Worton and obtain said
copy left with him.

On calling for said copy
Judge Worton could not
find it. Affiant urged
upon said Worton to search
every where, wherever it
might possibly be, and
give his reasons and
necessity of having it im-
mediately. Search was
made among the Court
papers, and Judge Wor-
ton professed to search
diligently at his house and
his office (and affiant
believes he did) and could
not find it.

Affiant has
called upon said Worton

several times since. by
letters and by his attorney
to produce said copy
but without effect till
the 4th of May instant
when he received the
same by mail from Judge
Norton with the state-
ment that he found
the same in a drawer
where he kept no court
papers. placed there he
does not know by whom
or when.

Appaint says that he
is informed by some
~~Buttman~~ Roberts th
that he informed
dependant Buttman who
is the sole dependant in
interest. of about the
2^d week of April. of his
mistake and that he
would have the clerk
around the record and
that Buttman answer-
ed that he did not
care so he inserted the
correct copy. which state.

ment of Roberts affiant
believed to be true.

In the meantime
affiant, not knowing that
said defendant would
undertake to derive any
advantage from such error
and believing himself, and
having the advice of his
counsel that according
to correct practice, and
the points made by de-
fendant in the Court
below, - said error in the
record could not affect
affiant injuriously, pro-
ceeded with his case, and
about the 1st instant sub-
mitted it on written ar-
gument filed, without
any knowledge of defen-
dant's points.

Subsequently, on the 4th
instant defendant
filed his brief, of which
affiant first had notice
on 7th instant at Per-

at evening, and affiant
discovers thereby that
defendant makes a point
based upon said error
in the record

Affiant does not now
consider, and he is so
advised by his counsel
that this point so made
by defendant can be prop-
erly urged to affiant's
disadvantage for many
reasons -

but still owing to the
fact that counsel are of-
ten found to mistake the
law, he deems it ad-
visable that the record
be corrected and the
whole case be presented
as it now is in the Court be-
low.

Subscribed & sworn
before me this 9th day
of May 1861.

L. Leland Clerk
by J. B. R. Deputy

E. P. Holbrook

No 37.-127
Hoolbrook
as
Coney et al.

Aff. of Hool-
brook on motion
for Certiorari

Filed May 7. 1861
L. Deland
clerk

Motion allowed

State of Illinois, } Third Grand Division.
SUPREME COURT. } APRIL TERM, 1861.

EDMUND S. HOLBROOK

vs.

WILLIAM CONEY & BENJAMIN S. PRETTYMAN.

Error to Tazewell.

BRIEF AND ARGUMENT OF DEFENDANTS.

The plaintiff in this case proved by the decree recited in the deed from Bostwick to Doolittle, that none of the lots in controversy were ever scheduled by the bankrupt, or known to the court at the date of the deed from Bostwick to Holbrook, offered by plaintiff in evidence; and that the court that entered the decree of bankruptcy, as soon as informed of the interest of the bankrupt in the lots in controversy, entered a specific decree requiring them to be sold at public auction by the assignee, which was accordingly done, and Doolittle, the assignee of the defendants, became the purchaser, and it was accordingly then conveyed to Doolittle; and that defendants, from him, obtained it by due course of conveyance.

The bankrupt law (see 5 U. S. Statutes at large, page 447 sec. 9,) requires "That all sales, transfers and other conveyances of the assignee of the bankrupt's property and rights of property shall be made at such times and in such manner as shall be ordered and appointed by the court in bankruptcy."

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This sale is made under a statutory power, and in all such sales *it must appear* that the requisitions of the statute, as conditions precedent to the operation of the power to pass the estate, have been complied with. And this sale and conveyance to the plaintiff, not having been made in the way prescribed by the statute, receives no sanction from it, and is void. See Young vs. Dowling, 15 Ills. R. page 481. And a void deed should not be read in evidence. See Scammon, page 323, Smith vs. Hileman. But this deed offered in evidence is further objectionable upon its face. The statute requires (see 5 U. S. Statutes, page 448, sec. 15,) that a copy of the decree of bankruptcy, and a copy of the decree appointing the assignee of the bankrupt, "*shall be recited in every deed of lands belonging to the bankrupt sold and conveyed by any assignee under and by virtue of this act.*" This deed, offered in evidence, contains no recital of the decree declaring James B. Campbell a bankrupt; which decree declaring him a bankrupt plaintiff read in evidence to the court. See record, page 38. And which this court, on inspection of the record, page 42, will perceive is not recited in the deed offered in evidence. The deed, therefore, is irregular and void; see Warren vs. Homestead, 33 Maine Reports, page 256; and ought to have been rejected. See Smith vs. Hileman, 1 Scammon, 323, where this question in principle is decided. The recital of the decree appointing the assignee alone, which is all that is recited in the deed, is not sufficient, and the deed offered in evidence was properly rejected. The plaintiff, therefore, could not recover, and the judgment of the Court should be affirmed.

B. S. PRETTYMAN,

Attorney for Defendants.

37

Hullbrook

vs

Conry

Defts, Brief & argto-

Filed May 4-1861

G. Lehard
Clark

State of Illinois,) Third Grand Division.
SUPREME COURT.) APRIL TERM, 1861.

EDMUND S. HOLBROOK

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The bankrupt law (see 5 U. S. Statutes at large, page 447 sec. 9,) requires "That all sales, transfers and other conveyances of the assignee of the bankrupt's property and rights of property shall be made at such times and in such manner as shall be ordered and appointed by the court in bankruptcy."

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B. S. PRETTYMAN,

Attorney for Defendants.

37

Holbrook

vs

Conroy

Defts Brief & # Ansts.

Filed May 4-1861

J. J. Ireland

Clerk

State of Illinois, } Third Grand Division.
SUPREME COURT. } APRIL TERM, 1861.

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vs

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Left Brief & Brief-

Filed May 4-1861

L. Leland

Clerk

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B. S. PRETTYMAN,

Attorney for Defendants.

No 37 = The Clerk of the Supreme
Court will please file this Brief
in the Case in which they are written
and oblige B. J. B. ~~W. B. B.~~

Filed May 4-1861

J. J. Clark
Clerk

37
The Clerk
as
Clerk
Prints

State of Illinois, } Third Grand Division.
SUPREME COURT. } APRIL TERM, 1861.

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Error to Tazewell.

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The plaintiff in this case proved by the decree recited in the deed from Bostwick to Doolittle, that none of the lots in controversy were ever scheduled by the bankrupt, or known to the court at the date of the deed from Bostwick to Holbrook; offered by plaintiff in evidence; and that the court that entered the decree of bankruptcy, as soon as informed of the interest of the bankrupt in the lots in controversy, entered a specific decree requiring them to be sold at public auction by the assignee, which was accordingly done, and Doolittle, the assignee of the defendants, became the purchaser, and it was accordingly then conveyed to Doolittle; and that defendants, from him, obtained it by due course of conveyance.

The bankrupt law (see 5 U. S. Statutes at large, page 447 sec. 9,) requires "That all sales, transfers and other conveyances of the assignee of the bankrupt's property and rights of property shall be made at such times and in such manner as shall be ordered and appointed by the court in bankruptcy."

The title of the plaintiff depended upon the regularity and validity of the sale and conveyance of Bostwick to him, recited in the deed offered in evidence.

to Bostwick
This deed, offered in evidence was properly rejected, because there was no order or decree of the court requiring the assignee to sell or convey this property, nor any order or decree appointing any time, place or manner of the sale. This is required by the statute above referred to, and cannot be dispensed with. It is a judicial power and cannot be delegated. This point is well considered and fully decided in the case of Osborn vs. Baxter et al., 4 Cushing's Rep. page 407.

This sale is made under a statutory power, and in all such sales *it must appear* that the requisitions of the statute, as conditions precedent to the operation of the power to pass the estate, have been complied with. And this sale and conveyance to the plaintiff, not having been made in the way prescribed by the statute, receives no sanction from it, and is void. See Young vs. Dowling, 15 Ills. R. page 481. And a void deed should not be read in evidence. See Scammon, page 323, Smith vs. Hileman. But this deed offered in evidence is further objectionable upon its face. The statute requires (see 5 U. S. Statutes, page 448, sec. 15,) that a copy of the decree of bankruptcy, and a copy of the decree appointing the assignee of the bankrupt, "*shall be recited in every deed of lands belonging to the bankrupt sold and conveyed by any assignee under and by virtue of this act.*" This deed, offered in evidence, contains no recital of the decree declaring James B. Campbell a bankrupt; which decree declaring him a bankrupt plaintiff read in evidence to the court. See record, page 38. And which this court, on inspection of the record, page 42, will perceive is not recited in the deed offered in evidence. The deed, therefore, is irregular and void; see Warren vs. Homestead, 33 Maine Reports, page 256; and ought to have been rejected. See Smith vs. Hileman, 1 Scammon, 323, where this question in principle is decided. The recital of the decree appointing the assignee alone, which is all that is recited in the deed, is not sufficient, and the deed offered in evidence was properly rejected. The plaintiff, therefore, could not recover, and the judgment of the Court should be affirmed.

B. S. PRETTYMAN,

Attorney for Defendants.

37

Hollbrook

vs

Covey

Defts, Brief & Argts

Filed May 4-1861

L. Leland

Clank

State of Illinois, } Third Grand Division.
SUPREME COURT. } APRIL TERM, 1861.

EDMUND S. HOLBROOK

vs.

WILLIAM CONEY & BENJAMIN S. PRETTYMAN.

Error to Tazewell.

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The plaintiff in this case proved by the decree recited in the deed from Bostwick to Doolittle, that none of the lots in controversy were ever scheduled by the bankrupt, or known to the court at the date of the deed from Bostwick to Holbrook, offered by plaintiff in evidence; and that the court that entered the decree of bankruptcy, as soon as informed of the interest of the bankrupt in the lots in controversy, entered a specific decree requiring them to be sold at public auction by the assignee, which was accordingly done, and Doolittle, the assignee of the defendants, became the purchaser, and it was accordingly then conveyed to Doolittle; and that defendants, from him, obtained it by due course of conveyance.

The bankrupt law (see 5 U. S. Statutes at large, page 447 sec. 9,) requires "That all sales, transfers and other conveyances of the assignee of the bankrupt's property and rights of property shall be made at such times and in such manner as shall be ordered and appointed by the court in bankruptcy."

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L. D. M.
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B. S. PRETTYMAN,

Attorney for Defendants.

37

Hullbrook

vs

Conroy

Prize & Costs

Filed May 4-1861

L. Leland

Clerk

STATE OF ILLINOIS,
Supreme Court,
THIRD GRAND DIVISION,

} APRIL TERM THEREOF, A. D., 1861.

EDMUND S. HOLBROOK,

vs.

WILLIAM CONEY & BENJAMIN S. PRETTYMAN.

} ERROR TO TAZEWELL, EJECTMENT.

PLAINTIFF'S ABSTRACT.

PAGE.

Suit by plaintiff to recover portions of Campbell, Durley & Newhall's addition to the town of Pekin, tried at the February Term of the Circuit Court, before Hon. James Harriott, without a jury, verdict and judgment for defendants.

8. The plaintiff in order to sustain the issue on his part, and that plaintiff and defendant claimed
9. 10. 11. 12. title to the premises described in the declaration from a common source, to-wit: from James B.
13. 14. 15. 16. Campbell, a bankrupt, by William C. Bostwick, his assignee, read in evidence, without objection a
17. deed by said Bostwick, as such assignee, to William B. Doolittle, of the lands described in the declaration dated the 17th day of June, A. D. 1851, and recorded, April 25th 1853.

(This deed is more particularly described hereafter.)

18 to 36. Plaintiff also read in evidence, without objection, for the same purpose, a deed of John A. Jones to defendant Prettyman, produced by Prettyman on notice, containing the same lands, dated the first day of December, 1855, and recorded Jan. 8th, 1856.

This deed rehearses a decree in Chancery, in the Tazewell Circuit court, October Term, A. D. 1855, at the suit of Amos L. Merriman, against the heirs and representatives of H. O. Merriman dec., and the heirs and representatives of Wm. B. Doolittle dec., setting forth that said lands mentioned in said deed of Bostwick to Doolittle were purchased in partnership by said H. O. & A. L. Merriman and said Doolittle in the name of Doolittle, and directing that said lands be sold as partnership effects and appointing Jones as commissioner for such purpose.

37. Defendants admitted that they took possession of the premises described in the declaration, immediately after the date of the deed of Jones to Prettyman and continued such possession to the present time.

Plaintiff then read without objection, a certified copy of a decree in bankruptcy, of the District Court of the United States, for the District of Illinois, dated October 3d, 1842, declaring James B. Campbell a bankrupt, and appointing William C. Bostwick his assignee.

Plaintiff then read in evidence without objection the 51st Rule of the said District Court, which was in words and figures following, to wit:

210 "It shall be the duty of the assignee of the Bankrupt to make sale of all the right, title and interest of the Bankrupt, whether equitable or legal, in and to any real estate, wheresoever situated, with all due diligence, having due regard to the interest of the creditors (unless some one of said creditors shall, previous to the time appointed for such sale, file with the assignee his written dissent thereto, when it shall be the duty of such assignee to refer the matter to the Court,) and that the sale of said Real Estate, or any interest therein be made, either for cash or upon a credit not exceeding one and one and a-half years, as the assignee shall deem most advisable, and upon the premises to be sold or at some public sale as said assignee shall deem best for the interest of said estate, at least twenty day's notice of the time, place and terms of sale being first given by affixing up at least three notices, and also by publication in some newspaper nearest the premises, when in the opinion of the assignee the property is sufficiently valuable to justify the expense of such publication."

Plaintiff then offered in evidence a deed by William C. Bostwick as assignee of James B. Campbell to plaintiff, in words and figures following, to wit:

WM. C. BOSTWICK, Assignee in Bankruptcy of
JAMES B. CAMPBELL,

TO

E. S. HOLBROOK.

No. 100088.
RECORDED, &c.,
OCTOBER 28th, 1850.

Whereas, by a decree of the honorable, the District Court of the United States of America for the District of Illinois, sitting as a court of Bankruptcy, James B. Campbell of the county of Jo Daviess in said District, was decreed a Bankrupt, which said decree bears date the 3d day of October, A. D., 1842, and is in the words and figures following, to wit:

DISTRICT COURT OF THE UNITED STATES, }
for the District of Illinois. }

"No. 919.

October 3d, 1842.

In the matter of the petition of James B. Campbell, to be declared a bankrupt, and to be discharged from his debts:

On hearing the petition of said James B. Campbell, filed in this court on the twenty-second day of August, A. D. 1842, praying to be declared a Bankrupt, in pursuance of the act of Congress entitled "An Act to establish a uniform system of bankruptcy throughout the United States," and it appearing satisfactorily to the Court, that notice has been published in pursuance of the previous order of this court and no sufficient cause being shown to the contrary, It is therefore ordered, adjudged and decreed that the said James B. Campbell be deemed a bankrupt, within the purview of said act. And it is further ordered and adjudged, that William C. Bostwick, of the County of Jo Daviess, be, and hereby is appointed assignee of said bankrupt, upon his entering into, before a Commissioner, and filing with the Clerk of this Court, a bond, in the penal sum of Dollars, with two or more sureties, to be approved by the Commissioner of the county, where the bankrupt resides conditioned for the due and faithful discharge of all his duties as such assignee, and his compliance with the orders and directions of the Court."

And whereas, I, the said William C. Bostwick, appointed assignee of the said James B. Campbell, a Bankrupt, in and by virtue of the Decree aforesaid, have complied with the provisions of said decree and have filed with the Clerk of said court, my sufficient bond, in the penal sum of Five Hundred Dollars, with the sufficient securities, approved by the proper commissioner, and have complied with all other the regulations and directions of said decree, and with all the rules in Bankruptcy, of said Honorable Court, so far as the same apply to, or are binding and incumbent upon me, and have, as such assignee, sold the property hereinafter described, at public auction at the Court House in said county of Jo Daviess, having first duly advertised the same, according to law, and the said peices and parcels of land and lots having been offered and sold seperately, and having been sold and struck at the prices following, and said property, lands and lots being described and designated as follows, to-wit: (here follows the description of lands sold, embracing those named in the declaration,) "and the said Edmund S. Holbrook being the highest and best bidder for each and every of said tracts of land and lots of ground, he became the purchaser thereof at said sale and the same were severally and each and every of them struck off to him.

Now therefore: Know all men by these presents, that I, the said William C. Bostwick, as assignee of the said James B. Campbell, a bankrupt, as aforesaid, in consideration of the sum of Thirty Dollars to me in hand paid by the said Edmund S. Holbrook, the receipt whereof is hereby acknowledged, do as such assignee, sell and convey unto the said Edmund S. Holbrook and to his heirs and assigns, the said tracts of land and lots of ground, as the same are herein before designated and described, To have and to hold the said tracts of land and lots of ground unto the said Edmund S. Holbrook, his heirs and assigns forever.

In witness whereof, I, the said William C. Bostwick in my capacity of assignee of said James B. Campbell, a bankrupt, as aforesaid, have hereunto set my hand and seal this eighteenth day of October, A. D. 1850.

WM. C. BOSTWICK,

Assignee in Bankruptcy, of James B. Campbell.

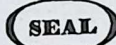
SEAL

STATE OF ILLINOIS, }
JO DAVIESS' COUNTY. }

Before me, Richard Seal, Clerk of the County Court of said County, personally appeared this day William C. Bostwick, to me personally known to be the identical person described in, and who executed the foregoing deed, and acknowledged to me that he had executed the same freely and voluntarily, for the uses and purposes therein mentioned.

Witness my signature and the Seal of said court, this 18th day of October, A. D. 1850.

RICHARD SEAL,
Clerk.



To the reading of which defendants objected on the ground that it did not appear that there was any order of the court requiring or authorizing the assignee to make the sale of the land described in the deed, and in controversy, or setting any time or place of such sale.

The Court decided that said deed, for this reason, could not be read in evidence, to which decision plaintiff then and there excepted.

This was all the testimony offered.

The deed of Bostwick to Doolittle recites this additional matter, after the words "having advertised the same according to law," Page 11 of Record—"and said sale having been made in pursuance of a decree of said District Court, dated 15th May, 1851, and which said decree is in words and figures following, to-wit:

"In the matter of the petition of William C. Bostwick, assignee in Bankruptcy, of James B. Campbell, declared a Bankrupt.

IN THE DISTRICT COURT OF THE UNITED STATES, }
within and for the District and State of Illinois. }

PETITION for the sale of Real Estate of Bankrupt.

And now on this day, this case coming on to be heard, on the petition of William C. Bostwick, assignee of James B. Campbell, a bankrupt, upon the exhibits and proofs, and it appearing to the Court, that the said James B. Campbell has an interest and claim in and to, the following real estate, situate in the county of Tazewell, and State of Illinois, to wit: " (here follows a description of the tracts of land and lots of ground, in the deed hereinafter mentioned and described, which said lands were not contained in the schedule filed in said Court by said Bankrupt.) "It is therefore ordered, adjudged and decreed, by said Court, that the said assignee, William C. Bostwick, proceed to sell all the estate, right, title and interest, in him vested as such assignee, in and to the lands above specified in such manner, upon such terms, and at such times, as is specified in the rules of this court, heretofore made and still in force, in regard to the sale of Real Estate of Bankrupts. It is further ordered that said assignee make a report at the earliest opportunity.

Then the deed in other respects is like the deed to plaintiff, except the date and name of grantee and time of recording, except in this, at the close.

"Now therefore, Know all men by these presents, that I, William C. Bostwick, as assignee of the said James B. Campbell, a bankrupt, as aforesaid, in the consideration of the sum of Fifty Dollars, to me in hand paid, by the said William B. Doolittle, the receipt whereof is hereby acknowledged, being the aggregate of the said several bids, as before mentioned, do, as such assignee, sell and convey, unto the said Wm. B. Doolittle, and to his heirs and assigns, all the right, title and interest, in me vested, as such assignee, in and to, the lots, land and Real Estate, hereinbefore specified, designated and described at the date of said sale, to-wit: this 17th day of June, A. D., 1851.

ERRORS ASSIGNED.

- 1st. The Court erred in not admitting the deed of Bostwick to plaintiff, to be read in evidence.
- 2nd. The Court erred in finding for defendants.
- 3rd. The Court erred in rendering judgment for defendants.

IN THE SUPREME COURT--APRIL TERM, 1861.

HOLBROOK.

vs.

CONEY & PRETTYMAN.

PLAINTIFF'S POINTS AND AUTHORITIES.

It was error to refuse to permit the deed of Bostwick, Assignee &c., to plaintiff, to be read in evidence.

1st. As a matter of *Practice*, it was erroneous to exclude it, as it was duly acknowledged and, in form, according to law. Though it was deemed necessary to support the deed by a certified copy of the decree in Bankruptcy recited in the deed, and to show the order of the Court in Bankruptcy, appointing the time and place of sale, yet the order of proof was optional with the plaintiff.

2d. It was not necessary for the plaintiff to prove an order of court, appointing the time and place of sale. This is a matter between the court and the assignee, who is the officer of the court, and gives bonds to comply with the orders of the Court. The bona-fide purchaser will be protected, although he sells without orders, or in violation of orders.

X This is made plain by the 15th Section of the law, which provides that a deed by the assignee containing a recital of a copy of the decree of Bankruptcy and the appointment of the assignee, supported by a certified copy of such order "shall be effectual to pass the title of the bankrupt of, in, and to, the lands therein mentioned, to the purchaser, as fully to all intents and purposes, as if made by such bankrupt himself, immediately before such order."

This, it will be seen, is the absolute rule of evidence as to deeds by the assignee without regard to rules, or the observance of rules.

This is not in conflict with other sections of the Statute. Section 3 provides, that the assignee, by the decree, *ipso facto*, shall become vested with all the rights of the bankrupt in his property, with authority to sell, &c., *subject* to the orders and directions of such Court."

Section 9, which is the only part of the Statute in which there is a provision as to the "time and manner" of sale, evidently pertains to the duty of the Court and the assignee, and not the purchaser.

5. *Bankr. L.R. 375 Barnes vs. Matteson*

3d. But the rule of the Court in Bankruptcy was shown, which was directory to the assignee as to the time and manner of sale; and this was followed with such strictness as the law requires in such cases.

Section 6 provides that the District Court should prescribe the rules of proceeding, subject to revision and change by the circuit court, and (Section 10,) all the proceedings are made matter of record.

x *Sawes v. S. L. by
Shawson*

Vol 5. p 2830

4th. If it be urged that such rule of court is not in accordance with the Statute, my reply is, that although this be so, (which is not admitted,) it is the order of a court of competent jurisdiction, and cannot be attacked collaterally, either for informality or error in law. That Court itself, or a superior Court, on appeal, alone can remedy it. The rule is universal in such cases, that the title of the purchaser, at a judicial sale, shall not be defeated by the error of the Court.

1 Con't. R. (1st Series) 467, Brown vs. Lanman.

7 How. R. (U. S.) 643 Shawhan et al, vs. Wherritt.

1 Bradford's Sur. R. 187, Farrington vs. King.

28 Al. R. 164, Saltonstall vs. Riley et al.

10 Mo. R. 447 Reed vs. Vaughn.

5 How (Miss.) 741, Griffith vs. Vertner.

10 Pet. 449 Voorhies vs. U. S. Bank.

Crabbe's R. 551 Atkinson vs. Perdy.

18 How (U. S.) 164 Griffiths vs. Rogers, do 497.

6 do 31, Bank vs. Moss.

20 do 495 Ingraham vs. Dawson.

22 do 473 Adams vs. Preston.

4 Scam. 371 Swigart vs Harber.

17 Ills. 154 Phillips vs. Coffee.

*See 2 How. (U. S.) 338 Ingraham vs. Dawson
for resume of old decisions*

5. It will be observed that defendants claim title from the same source with the plaintiff, and under the same proceedings, and the same in kind, which is an admission of their legality. The deed of Bostwick under which they claim was made under the same rule of Court as to sale of Real Estate, and professed to carry only such title as assignee then had to the property (June 17th 1851) after sale had been made to plaintiff, and thus it can hardly be believed that said objection to plaintiff's deed was made in good faith.

The additional order of Court shown in deed to Doolittle, nor the facts upon which it was based (as that the bankrupt did not schedule this property,) cannot affect plaintiff's title, as, by the act of Bankruptcy, all his right of property, whether scheduled or not, passed to the assignee; and the rule required the sale of all his property. See Sec. 3, of the law, and as to its construction, see

+ 2 Story's R. 131, 327, 369, 376.

8 McLan 235. *McLean Assignee vs Rocky*

+ 131. *Epate John I Foster*

327 ~ ~ *Fuller*

360. ~ ~ *Newhall*

376 ~ ~ *Cook*

STATE OF ILLINOIS,
Supreme Court,
THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D., 1861.

EDMUND S. HOLBROOK,

vs.

WILLIAM CONEY & BENJAMIN S. PRETTYMAN.

ERROR TO TAZEWELL, EJECTMENT.

PLAINTIFF'S ABSTRACT.

PAGE. Suit by plaintiff to recover portions of Campbell, Durley & Newhall's addition to the town of Pe-
kin, tried at the February Term of the Circuit Court, before Hon. James Harriott, without a jury,
verdict and judgment for defendants.

8. The plaintiff in order to sustain the issue on his part, and that plaintiff and defendant claimed
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13. 14. 15. 16. Campbell, a bankrupt, by William C. Bostwick, his assignee, read in evidence, without objection a
17. deed by said Bostwick, as such assignee, to William B. Doolittle, of the lands described in the de-
claration dated the 17th day of June, A. D. 1851, and recorded, April 25th 1853.

(This deed is more particularly described hereafter.)

18 to 36. Plaintiff also read in evidence, without objection, for the same purpose, a deed of John A. Jones
to defendant Prettyman, produced by Prettyman on notice, containing the same lands, dated the first
day of December, 1855, and recorded Jan. 8th, 1856.

This deed rehearses a decree in Chancery, in the Tazewell Circuit court, October Term, A. D. 1855,
at the suit of Amos L. Merriman, against the heirs and representatives of H. O. Merriman dec., and
the heirs and representatives of Wm. B. Doolittle dec., setting forth that said lands mentioned in
said deed of Bostwick to Doolittle were purchased in partnership by said H. O. & A. L. Merriman
and said Doolittle in the name of Doolittle, and directing that said lands be sold as partnership effects
and appointing Jones as commissioner for such purpose.

27. Defendants admitted that they took possession of the premises described in the declaration, imme-
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ent time.

Plaintiff then read without objection, a certified copy of a decree in bankruptcy, of the District
Court of the United States, for the District of Illinois, dated October 3d, 1842, declaring James B.
Campbell a bankrupt, and appointing William C. Bostwick his assignee.

Plaintiff then read in evidence without objection the 51st Rule of the said District Court, which
was in words and figures following, to wit:

40 "It shall be the duty of the assignee of the Bankrupt to make sale of all the right, title and in-
terest of the Bankrupt, whether equitable or legal, in and to any real estate, wheresoever situated,
with all due diligence, having due regard to the interest of the creditors (unless some one of said
creditors shall, previous to the time appointed for such sale, file with the assignee his written dis-
sent thereto, when it shall be the duty of such assignee to refer the matter to the Court,) and that
the sale of said Real Estate, or any interest therein be made, either for cash or upon a credit not
exceeding one and one and a-half years, as the assignee shall deem most advisable, and upon the
premises to be sold or at some public sale as said assignee shall deem best for the interest of said
estate, at least twenty day's notice of the time, place and terms of sale being first given by affixing
up at least three notices, and also by publication in some newspaper nearest the premises, when in
the opinion of the assignee the property is sufficiently valuable to justify the expense of such publica-
tion."

Plaintiff then offered in evidence a deed by William C. Bostwick as assignee of James B. Camp-
bell to plaintiff, in words and figures following, to wit:

WM. C. BOSTWICK, Assignee in Bankruptcy of
JAMES B. CAMPBELL,

TO

E. S. HOLBROOK.

No. 100088.
RECORDED, &c.,
OCTOBER 28th, 1850.

4/2
Whereas, by a decree of the honorable, the District Court of the United States of America for the District of Illinois, sitting as a court of Bankruptcy, James B. Campbell of the county of Jo Daviess in said District, was decreed a Bankrupt, which said decree bears date the 3d day of October, A. D., 1842, and is in the words and figures following, to wit:

DISTRICT COURT OF THE UNITED STATES, }
for the District of Illinois. }

"No. 919.

October 3d, 1842.

In the matter of the petition of James B. Campbell, to be declared a bankrupt, and to be discharged from his debts:

On hearing the petition of said James B. Campbell, filed in this court on the twenty-second day of August, A. D. 1842, praying to be declared a Bankrupt, in pursuance of the act of Congress entitled "An Act to establish a uniform system of bankruptcy throughout the United States," and it appearing satisfactorily to the Court, that notice has been published in pursuance of the previous order of this court and no sufficient cause being shown to the contrary, It is therefore ordered, adjudged and decreed that the said James B. Campbell be deemed a bankrupt, within the purview of said act. And it is further ordered and adjudged, that William C. Bostwick, of the County of Jo Daviess, be, and hereby is appointed assignee of said bankrupt, upon his entering into, before a Commissioner, and filing with the Clerk of this Court, a bond, in the penal sum of Dollars, with two or more sureties, to be approved by the Commissioner of the county, where the bankrupt resides conditioned for the due and faithful discharge of all his duties as such assignee, and his compliance with the orders and directions of the Court."

And whereas, I, the said William C. Bostwick, appointed assignee of the said James B. Campbell, a Bankrupt, in and by virtue of the Decree aforesaid, have complied with the provisions of said decree and have filed with the Clerk of said court, my sufficient bond, in the penal sum of Five Hundred Dollars, with the sufficient securities, approved by the proper commissioner, and have complied with all other the regulations and directions of said decree, and with all the rules in Bankruptcy, of said Honorable Court, so far as the same apply to, or are binding and incumbent upon me, and have, as such assignee, sold the property hereinafter described, at public auction at the Court House in said county of Jo Daviess, having first duly advertised the same according to law, and the said peices and parcels of land and lots having been offered and sold seperately, and having been sold and struck at the prices following, and said property, lands and lots being described and designated as follows, to-wit: (here follows the description of lands sold, embracing those named in the declaration,) "and the said Edmund S. Holbrook being the highest and best bidder for each and every of said tracts of land and lots of ground, he became the purchaser thereof at said sale and the same were severally and each and every of them struck off to him.

Now therefore: Know all men by these presents, that I, the said William C. Bostwick, as assignee of the said James B. Campbell, a bankrupt, as aforesaid, in consideration of the sum of Thirty Dollars to me in hand paid by the said Edmund S. Holbrook, the receipt whereof is hereby acknowledged, do as such assignee, sell and convey unto the said Edmund S. Holbrook and to his heirs and assigns, the said tracts of land and lots of ground, as the same are herein before designated and described, To have and to hold the said tracts of land and lots of ground unto the said Edmund S. Holbrook, his heirs and assigns forever.

In witness whereof, I, the said William C. Bostwick in my capacity of assignee of said James B. Campbell, a bankrupt, as aforesaid, have hereunto set my hand and seal this eighteenth day of October, A. D. 1850.

WM. C. BOSTWICK,

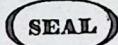
Assignee in Bankruptcy, of James B. Campbell.

SEAL

STATE OF ILLINOIS, }
JO DAVIESS COUNTY. }

Before me, Richard Seal, Clerk of the County Court of said County, personally appeared this day William C. Bostwick, to me personally known to be the identical person described in, and who executed the foregoing deed, and acknowledged to me that he had executed the same freely and voluntarily, for the uses and purposes therein mentioned.

Witness my signature and the Seal of said court, this 18th day of October, A. D. 1850.



RICHARD SEAL,
Clerk.

To the reading of which defendants objected on the ground that it did not appear that there was any order of the court requiring or authorizing the assignee to make the sale of the land described in the deed, and in controversy, or setting any time or place of such sale.

The Court decided that said deed, for this reason, could not be read in evidence, to which decision plaintiff then and there excepted.

This was all the testimony offered.

The deed of Bostwick to Doolittle recites this additional matter, after the words "having advertised the same according to law," Page 11 of Record—"and said sale having been made in pursuance of a decree of said District Court, dated 15th May, 1851, and which said decree is in words and figures following, to-wit:

"In the matter of the petition of William C. Bostwick, assignee in Bankruptcy, of James B. Campbell, declared a Bankrupt.

IN THE DISTRICT COURT OF THE UNITED STATES, }
within and for the District and State of Illinois. }

PETITION for the sale of Real Estate of Bankrupt.

And now on this day, this case coming on to be heard, on the petition of William C. Bostwick, assignee of James B. Campbell, a bankrupt, upon the exhibits and proofs, and it appearing to the Court, that the said James B. Campbell has an interest and claim in and to, the following real estate, situate in the county of Tazewell, and State of Illinois, to wit:" (here follows a description of the tracts of land and lots of ground, in the deed hereinafter mentioned and described, which said lands were not contained in the schedule filed in said Court by said Bankrupt.) "It is therefore ordered, adjudged and decreed, by said Court, that the said assignee, William C. Bostwick, proceed to sell all the estate, right, title and interest, in him vested as such assignee, in and to the lands above specified in such manner, upon such terms, and at such times, as is specified in the rules of this court, heretofore made and still in force, in regard to the sale of Real Estate of Bankrupts. It is further ordered that said assignee make a report at the earliest opportunity.

Then the deed in other respects is like the deed to plaintiff, except the date and name of grantee and time of recording, except in this, at the close.

"Now therefore, Know all men by these presents, that I, William C. Bostwick, as assignee of the said James B. Campbell, a bankrupt, as aforesaid, in the consideration of the sum of Fifty Dollars, to me in hand paid, by the said William B. Doolittle, the receipt whereof is hereby acknowledged, being the aggregate of the said several bids, as before mentioned, do, as such assignee, sell and convey, unto the said Wm. B. Doolittle, and to his heirs and assigns, all the right, title and interest, in me vested, as such assignee, in and to, the lots, land and Real Estate, hereinbefore specified, designated and described at the date of said sale, to-wit: this 17th day of June, A. D., 1851.

ERRORS ASSIGNED.

- 1st. The Court erred in not admitting the deed of Bostwick to plaintiff, to be read in evidence.
- 2nd. The Court erred in finding for defendants.
- 3rd. The Court erred in rendering judgment for defendants.

IN THE SUPREME COURT--APRIL TERM, 1861.

HOLBROOK.

vs.

CONEY & PRETTYMAN.

PLAINTIFF'S POINTS AND AUTHORITIES.

It was error to refuse to permit the deed of Bostwick, Assignee &c., to plaintiff, to be read in evidence.

1st. As a matter of *Practice*, it was erroneous to exclude it, as it was duly acknowledged and, in form, according to law. Though it was deemed necessary to support the deed by a certified copy of the decree in Bankruptcy recited in the deed, and to show the order of the Court in Bankruptcy, appointing the time and place of sale, yet the order of proof was optional with the plaintiff.

2d. It was not necessary for the plaintiff to prove an order of court, appointing the time and place of sale. This is a matter between the court and the assignee, who is the officer of the court, and gives bonds to comply with the orders of the Court. The bona-fide purchaser will be protected, although he sells without orders, or in violation of orders.

This is made plain by the 15th Section of the law, which provides that a deed by the assignee containing a recital of a copy of the decree of Bankruptcy and the appointment of the assignee, supported by a certified copy of such order "shall be effectual to pass the title of the bankrupt of, in, and to, the lands therein mentioned, to the purchaser, as fully to all intents and purposes, as if made by such bankrupt himself, immediately before such order."

This, it will be seen, is the absolute rule of evidence as to deeds by the assignee without regard to rules, or the observance of rules.

This is not in conflict with other sections of the Statute. Section 3 provides, that the assignee, by the decree, *ipso facto*, shall become vested with all the rights of the bankrupt in his property, with authority to sell, &c., subject to the orders and directions of such Court."

Section 9, which is the only part of the Statute in which there is a provision as to the "time and manner" of sale, evidently pertains to the duty of the Court and the assignee, and not the purchaser.

5 Barb. P.C.R. 375 Barnes v. Bateson

3d. But the rule of the Court in Bankruptcy was shown, which was directory to the assignee as to the time and manner of sale; and this was followed with such strictness as the law requires in such cases.

Section 6 provides that the District Court should prescribe the rules of proceeding, subject to revision and change by the circuit court, and (Section 10,) all the proceedings are made matter of record:

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G. H. H. H.

vol 5. p. 2830

4th. If it be urged that such rule of court is not in accordance with the Statute, my reply is, that although this be so, (which is not admitted,) it is the order of a court of competent jurisdiction, and cannot be attacked collaterally, either for informality or error in law. That Court itself, or a superior Court, on appeal, alone can remedy it. The rule is universal in such cases, that the title of the purchaser, at a judicial sale, shall not be defeated by the error of the Court.

1 Con't. R. (1st Series) 467, Brown vs. Lanman.

7 How. R. (U. S.) 643 Shawhan et al, vs. Wherritt.

1 Bradford's Sur. R. 187, Farrington vs. King.

28 Al. R. 164, Salstonstall vs. Riley et al.

10 Mo. R. 447 Reed vs. Vaughn.

5 How (Miss.) 741, Griffith vs. Vertner.

10 Pet. 449 Voorhies vs. U. S. Bank.

Crabbe's R. 551 Atkinson vs. Perdy.

18 How (U. S.) 164 Griffiths vs. Rogers, do 497.

6 do 31, Bank vs. Moss.

20 do 495 Ingraham vs. Dawson.

22 do 473 Adams vs. Preston.

4 Scam. 371 Swigart vs Harber.

17 Ills. 154 Phillips vs. Coffee.

*See 2 How. (U.S.) 338. Grignon vs. Lessee as
Astor for resume of all decisions*

5. It will be observed that defendants claim title from the same source with the plaintiff, and under the same proceedings, and the same in kind, which is an admission of their legality. The deed of Bostwick under which they claim was made under the same rule of Court as to sale of Real Estate, and professed to carry only such title as assignee then had to the property (June 17th 1851) after sale had been made to plaintiff, and thus it can hardly be believed that said objection to plaintiff's deed was made in good faith.

The additional order of Court shown in deed to Doolittle, nor the facts upon which it was based (as that the bankrupt did not schedule this property,) cannot affect plaintiff's title, as, by the act of Bankruptcy, all his right of property, whether scheduled or not, passed to the assignee; and the rule required the sale of all his property. See Sec. 3, of the law, and as to its construction, see

✓ 2 Story's R. 131, 327, 360, 376.

3 McLan 235. *McLan Assignee vs Rocky etc*

+ 131. *Ex parte Foster*
327. *— — — — — Fuller*
360. *— — — — — Newhall*
376. *— — — — — Cook*

37

Hallbrook
vs

Conroy

Abstract

Plantiffs Points

& Antecedents

Filed Apr. 25 - 1861

G. Leland

Clerk

STATE OF ILLINOIS, }
SUPREME COURT,

ss. The People of the State of Illinois,

To the Clerk of the *Circuit* - Court for the County of *Tazewell* - Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the *Circuit* - Court of *Tazewell* County, before the Judge thereof, between *Edmund S. Holbrook*

plaintiff, and

John Nichol & Benjamin S. Prettyman

defendants, it is said manifest error hath intervened, to the injury of the aforesaid plaintiff

as we are informed by *his* complaint - and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law!

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *third* day of *April* in the Year of Our Lord one thousand eight hundred and *fifty six*.

L. Seland

Clerk of the Supreme Court.

Edmund ²⁷ Holbrook
John ²⁷ Nickol Seal

Wint of Erie

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Sheriff of the County of

Tazewell

Greeting:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of Tazewell County, before the Judge thereof, between Edmund S. Holbrook

plaintiff; and William Coney and Benjamin S. Prettyman

defendant. ..., it is said that manifest error hath intervened, to the injury of the said plaintiff

... as we are informed by his complaints ... the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said William Coney and Benjamin S. Prettyman

that they ... be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if they ... shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said William Coney and Benjamin S. Prettyman

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 27th day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty one

L. Leland

Clerk of the Supreme Court.

J. B. Rice Deputy

Living	100
Engel	10
Butter	10
	120

C. Williamson, L. S. C.
Per Mrs. C. Adams Esq.

Edmund S. Hylbrosch

No.

2.5

William Boney and
Benjamin S. Prettyman

SCIRE FACIAS.

Filed

FILED April 17 -

A. D. 186

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Bleck

Last Day of Service
April 6th 1861

**STATE OF ILLINOIS,
Supreme Court,
THIRD GRAND DIVISION,**

APRIL TERM THEREOF, A. D., 1861.

EDMUND S. HOLBROOK,

vs.

WILLIAM CONEY & BENJAMIN S. PRETTYMAN.

ERROR TO TAZEWELL, EJECTMENT.

PLAINTIFF'S ABSTRACT.

- PAGE. Suit by plaintiff to recover portions of Campbell, Durley & Newhall's addition to the town of Pe-
kin, tried at the February Term of the Circuit Court, before Hon. James Harriott, without a jury,
verdict and judgment for defendants.
8. The plaintiff in order to sustain the issue on his part, and that plaintiff and defendant claimed
9. 10. 11. 12. title to the premises described in the declaration from a common source, to-wit: from James B.
13. 14. 15. 16. Campbell, a bankrupt, by William C. Bostwick, his assignee, read in evidence, without objection a
17. deed by said Bostwick, as such assignee, to William B. Doolittle, of the lands described in the dec-
laration dated the 17th day of June, A. D. 1851, and recorded, April 25th 1853.
(This deed is more particularly described hereafter.)
- 18 to 36. Plaintiff also read in evidence, without objection, for the same purpose, a deed of John A. Jones
to defendant Prettyman, produced by Prettyman on notice, containing the same lands, dated the first
day of December, 1855, and recorded Jan. 8th, 1856.
- This deed rehearses a decree in Chancery, in the Tazewell Circuit court, October Term, A. D. 1855,
at the suit of Amos L. Merriman, against the heirs and representatives of H. O. Merriman dec., and
the heirs and representatives of Wm. B. Doolittle dec., setting forth that said lands mentioned in
said deed of Bostwick to Doolittle were purchased in partnership by said H. O. & A. L. Merriman
and said Doolittle in the name of Doolittle, and directing that said lands be sold as partnership effects
and appointing Jones as commissioner for such purpose.
37. Defendants admitted that they took possession of the premises described in the declaration, imme-
diately after the date of the deed of Jones to Prettyman and continued such possession to the pres-
ent time.
- Plaintiff then read without objection, a certified copy of a decree in bankruptcy, of the District
Court of the United States, for the District of Illinois, dated October 3d, 1842, declaring James B.
Campbell a bankrupt, and appointing William C. Bostwick his assignee.
- Plaintiff then read in evidence without objection the 51st Rule of the said District Court, which
was in words and figures following, to wit:
- 40 "It shall be the duty of the assignee of the Bankrupt to make sale of all the right, title and in-
terest of the Bankrupt, whether equitable or legal, in and to any real estate, wheresoever situated,
with all due diligence, having due regard to the interest of the creditors (unless some one of said
creditors shall, previous to the time appointed for such sale, file with the assignee his written dis-
sent thereto, when it shall be the duty of such assignee to refer the matter to the Court,) and that
the sale of said Real Estate, or any interest therein be made, either for cash or upon a credit not
exceeding one and one and a-half years, as the assignee shall deem most advisable, and upon the
premises to be sold or at some public sale as said assignee shall deem best for the interest of said
estate, at least twenty day's notice of the time, place and terms of sale being first given by affixing
up at least three notices, and also by publication in some newspaper nearest the premises, when in
the opinion of the assignee the property is sufficiently valuable to justify the expense of such publica-
tion."
- Plaintiff then offered in evidence a deed by William C. Bostwick as assignee of James B. Camp-
bell to plaintiff, in words and figures following, to wit:

WM. C. BOSTWICK, Assignee in Bankruptcy of
JAMES B. CAMPBELL,

TO

E. S. HOLBROOK.

No. 100088.

RECORDED, &c.,

OCTOBER 28th, 1850.

42

Whereas, by a decree of the honorable, the District Court of the United States of America for the District of Illinois, sitting as a court of Bankruptcy, James B. Campbell of the county of Jo Daviess in said District, was decreed a Bankrupt, which said decree bears date the 3d day of October, A. D., 1842, and is in the words and figures following, to wit:

DISTRICT COURT OF THE UNITED STATES, }
for the District of Illinois. }

"No. 919.

October 3d, 1842.

In the matter of the petition of James B. Campbell, to be declared a bankrupt, and to be discharged from his debts:

On hearing the petition of said James B. Campbell, filed in this court on the twenty-second day of August, A. D. 1842, praying to be declared a Bankrupt, in pursuance of the act of Congress entitled "An Act to establish a uniform system of bankruptcy throughout the United States," and it appearing satisfactorily to the Court, that notice has been published in pursuance of the previous order of this court and no sufficient cause being shown to the contrary, It is therefore ordered, adjudged and decreed that the said James B. Campbell be deemed a bankrupt, within the purview of said act. And it is further ordered and adjudged, that William C. Bostwick, of the County of Jo Daviess, be, and hereby is appointed assignee of said bankrupt, upon his entering into, before a Commissioner, and filing with the Clerk of this Court, a bond, in the penal sum of Dollars, with two or more sureties, to be approved by the Commissioner of the county, where the bankrupt resides conditioned for the due and faithful discharge of all his duties as such assignee, and his compliance with the orders and directions of the Court."

And whereas, I, the said William C. Bostwick, appointed assignee of the said James B. Campbell, a Bankrupt, in and by virtue of the Decree aforesaid, have complied with the provisions of said decree and have filed with the Clerk of said court, my sufficient bond, in the penal sum of Five Hundred Dollars, with the sufficient securities, approved by the proper commissioner, and have complied with all other the regulations and directions of said decree, and with all the rules in Bankruptcy, of said Honorable Court, so far as the same apply to, or are binding and incumbent upon me, and have, as such assignee, sold the property hereinafter described, at public auction at the Court House in said county of Jo Daviess, having first duly advertised the same, according to law, and the said peices and parcels of land and lots having been offered and sold seperately, and having been sold and struck at the prices following, and said property, lands and lots being described and designated as follows, to-wit: (here follows the description of lands sold, embracing those named in the declaration,) "and the said Edmund S. Holbrook being the highest and best bidder for each and every of said tracts of land and lots of ground, he became the purchaser thereof at said sale and the same were severally and each and every of them struck off to him.

Now therefore: Know all men by these presents, that I, the said William C. Bostwick, as assignee of the said James B. Campbell, a bankrupt, as aforesaid, in consideration of the sum of Thirty Dollars to me in hand paid by the said Edmund S. Holbrook, the receipt whereof is hereby acknowledged, do as such assignee, sell and convey unto the said Edmund S. Holbrook and to his heirs and assigns, the said tracts of land and lots of ground, as the same are herein before designated and described, To have and to hold the said tracts of land and lots of ground unto the said Edmund S. Holbrook, his heirs and assigns forever.

In witness whereof, I, the said William C. Bostwick in my capacity of assignee of said James B. Campbell, a bankrupt, as aforesaid, have hereunto set my hand and seal this eighteenth day of October, A. D. 1850.

WM. C. BOSTWICK,

Assignee in Bankruptcy, of James B. Campbell.

SEAL

STATE OF ILLINOIS, }
JO DAVIESS COUNTY. }

Before me, Richard Seal, Clerk of the County Court of said County, personally appeared this day William C. Bostwick, to me personally known to be the identical person described in, and who executed the foregoing deed, and acknowledged to me that he had executed the same freely and voluntarily, for the uses and purposes therein mentioned.

Witness my signature and the Seal of said court, this 18th day of October, A. D. 1850.



RICHARD SEAL,
Clerk.

To the reading of which defendants objected on the ground that it did not appear that there was any order of the court requiring or authorizing the assignee to make the sale of the land described in the deed, and in controversy, or setting any time or place of such sale.

The Court decided that said deed, for this reason, could not be read in evidence, to which decision plaintiff then and there excepted.

This was all the testimony offered.

The deed of Bostwick to Doolittle recites this additional matter, after the words "having advertised the same according to law," Page 11 of Record—"and said sale having been made in pursuance of a decree of said District Court, dated 15th May, 1851, and which said decree is in words and figures following, to-wit:

"In the matter of the petition of William C. Bostwick, assignee in Bankruptcy, of James B. Campbell, declared a Bankrupt.

IN THE DISTRICT COURT OF THE UNITED STATES, }
within and for the District and State of Illinois. }

PETITION for the sale of Real Estate of Bankrupt.

And now on this day, this case coming on to be heard, on the petition of William C. Bostwick, assignee of James B. Campbell, a bankrupt, upon the exhibits and proofs, and it appearing to the Court, that the said James B. Campbell has an interest and claim in and to, the following real estate, situate in the county of Tazewell, and State of Illinois, to wit:" (here follows a description of the tracts of land and lots of ground, in the deed hereinafter mentioned and described, which said lands were not contained in the schedule filed in said Court by said Bankrupt.) "It is therefore ordered, adjudged and decreed, by said Court, that the said assignee, William C. Bostwick, proceed to sell all the estate, right, title and interest, in him vested as such assignee, in and to the lands above specified in such manner, upon such terms, and at such times, as is specified in the rules of this court, heretofore made and still in force, in regard to the sale of Real Estate of Bankrupts. It is further ordered that said assignee make a report at the earliest opportunity.

Then the deed in other respects is like the deed to plaintiff, except the date and name of grantee and time of recording, except in this, at the close.

"Now therefore, Know all men by these presents, that I, William C. Bostwick, as assignee of the said James B. Campbell, a bankrupt, as aforesaid, in the consideration of the sum of Fifty Dollars, to me in hand paid, by the said William B. Doolittle, the receipt whereof is hereby acknowledged, being the aggregate of the said several bids, as before mentioned, do, as such assignee, sell and convey, unto the said Wm. B. Doolittle, and to his heirs and assigns, all the right, title and interest, in me vested, as such assignee, in and to, the lots, land and Real Estate, hereinbefore specified, designated and described at the date of said sale, to-wit: this 17th day of June, A. D., 1851.

ERRORS ASSIGNED.

- 1st. The Court erred in not admitting the deed of Bostwick to plaintiff, to be read in evidence.
- 2nd. The Court erred in finding for defendants.
- 3rd. The Court erred in rendering judgment for defendants.

IN THE SUPREME COURT--APRIL TERM, 1861.

HOLBROOK.

vs.

CONEY & PRETTYMAN.

PLAINTIFF'S POINTS AND AUTHORITIES.

It was error to refuse to permit the deed of Bostwick, Assignee &c., to plaintiff, to be read in evidence.

1st. As a matter of *Practice*, it was erroneous to exclude it, as it was duly acknowledged and, in form, according to law. Though it was deemed necessary to support the deed by a certified copy of the decree in Bankruptcy recited in the deed, and to show the order of the Court in Bankruptcy, appointing the time and place of sale, yet the order of proof was optional with the plaintiff.

2d. It was not necessary for the plaintiff to prove an order of court, appointing the time and place of sale. This is a matter between the court and the assignee, who is the officer of the court, and gives bonds to comply with the orders of the Court. The bona-fide purchaser will be protected, although he sells without orders, or in violation of orders.

This is made plain by the 15th Section of the law, which provides that a deed by the assignee containing a recital of a copy of the decree of Bankruptcy and the appointment of the assignee, supported by a certified copy of such order "shall be effectual to pass the title of the bankrupt of, in, and to, the lands therein mentioned, to the purchaser, as fully to all intents and purposes, as if made by such bankrupt himself, immediately before such order."

This, it will be seen, is the absolute rule of evidence as to deeds by the assignee without regard to rules, or the observance of rules.

This is not in conflict with other sections of the Statute. Section 3 provides, that the assignee, by the decree, *ipso facto*, shall become vested with all the rights of the bankrupt in his property, with authority to sell, &c., *subject* to the orders and directions of such Court."

Section 9, which is the only part of the Statute in which there is a provision as to the "time and manner" of sale, evidently pertains to the duty of the Court and the assignee, and not the purchaser.

5 Barb. 264, 375 Barnes vs. Matteson

3d. But the rule of the Court in Bankruptcy was shown, which was directory to the assignee as to the time and manner of sale; and this was followed with such strictness as the law requires in such cases.

Section 6 provides that the District Court should prescribe the rules of proceeding, subject to revision and change by the circuit court, and (Section 10,) all the proceedings are made matter of record.

Lawes v. S. by
Shannon H.
Vol 5. p. 283

4th. If it be urged that such rule of court is not in accordance with the Statute, my reply is, that although this be so, (which is not admitted,) it is the order of a court of competent jurisdiction, and cannot be attacked collaterally, either for informality or error in law. That Court itself, or a superior Court, on appeal, alone can remedy it. The rule is universal in such cases, that the title of the purchaser, at a judicial sale, shall not be defeated by the error of the Court.

1 Con't. R. (1st Series) 467, Brown vs. Lanman.

7 How. R. (U. S.) 643 Shawhan et al, vs. Wherritt.

1 Bradford's Sur. R. 187, Farrington vs. King.

28 Al. R. 164, Saltonstall vs. Riley et al.

10 Mo. R. 447 Reed vs. Vaughn.

5 How (Miss.) 741, Griffith vs. Vertner.

10 Pet. 449 Voorhies vs. U. S. Bank.

Crabbe's R. 551 Atkinson vs. Perdy.

18 How (U. S.) 164 Griffiths vs. Rogers, do 497.

6 do 31, Bank vs. Moss.

20 do 495 Ingraham vs. Dawson.

22 do 473 Adams vs. Preston.

4 Scam. 371 Swigart vs Harber.

17 Ills. 154 Phillips vs. Coffee.

*See 2 How (U.S.) Grynnus Lessee vs. Lester
for resume of old decisions.*

5. It will be observed that defendants claim title from the same source with the plaintiff, and under the same proceedings, and the same in kind, which is an admission of their legality. The deed of Bostwick under which they claim was made under the same rule of Court as to sale of Real Estate, and professed to carry only such title as assignee then had to the property (June 17th 1851) after sale had been made to plaintiff, and thus it can hardly be believed that said objection to plaintiff's deed was made in good faith.

The additional order of Court shown in deed to Doolittle, nor the facts upon which it was based (as that the bankrupt did not schedule this property,) cannot affect plaintiff's title, as, by the act of Bankruptcy, all his right of property, whether scheduled or not, passed to the assignee; and the rule required the sale of all his property. See Sec. 3, of the law, and as to its construction, see

X 2 Story's R. 131, 327, 360, 376.

3 McLan 235. *McCann assignee vs. Rockey et al*

X 131. *Ex parte John J. Foster*

327. *Ex parte Henry W. Fuller*

365. *Ex parte Newhall*

376. *In matter of Enck Book*

37

Hulbrook
vs

Conroy et al.

Abstract
Plaintiffs Bills &
Authorities

Filed Apr. 25-1861

G. Leland

Clk

{ District Court United States
Northern District of Illinois

The Decree declaring James B. Campbell a Bankrupt and appointing William C. Postwick the assignee of said Bankrupt is found in the Bankrupt Record of the District Court of the United States for the District of Illinois under the date of "Oct 3rd 1842" and case number 919 - and is in the words and figures following to wit:

Oct. 3rd 1842

919

In the matter of the Petition of James B. Campbell to be declared a Bankrupt and to be discharged from his debts.

On hearing the Petition of the said James B. Campbell filed in this Court on the - day of - A.D. 184 - praying to be declared a Bankrupt, in pursuance of an act of Congress entitled "An act to establish a uniform system of Bankruptcy throughout the United States"; and it appearing satisfactorily to the Court that notice has been published in pursuance of the previous order of this Court, and no sufficient cause being shown to the contrary; It is therefore ordered adjudged and decreed that the said James B. Campbell be deemed a Bankrupt within the purview of said act, and it is further ordered and adjudged that William C. Postwick of the County of Jo Daviess be and hereby is appointed assignee of said Bankrupt upon his entering into before a Commissioner and filing with the clerk of this Court a bond in the penal sum of - Dollars to the United States, with two

or more sureties to be approved by the Commissioners of the County where the Bankrupt resides, conditioned for the due and faithful discharge of all his duties as such assignee, and his compliance with the orders and directions of the Court. On motion of Purple & Herriman Esqrs for petitioner, ordered that cause be shown before the Court on the 1st day of Feb'y next, at 9 o'clock A.M. why James D. Campbell should not receive his discharge & certificate as a Bankrupt and that notice thereof be published for 70 days previous thereto as required by rule No 17 of this Court

James F. Cwings Clk

The fifty first Rule - of the "Rules and Forms in Bankruptcy" relating to the sales &c is in the words and figures following, to wit: -

~ Rule I.I. ~

It shall be the duty of the assignee of the Bankrupt to make sale of all the right, title and interest of the Bankrupt whether equitable or legal, in and to any real estate wheresoever situated, with all due diligence, having due regard to the interest of the creditors (unless some one of said Creditors shall previous to the time appointed for such sale, file with the assignee his written dissent thereto; when it shall be the duty of such assignee to refer the matter to the Court); and that the sale of said real estate, or any interest therein, be made either for cash, or upon a credit not exceeding one and one half years, as the assignee shall deem most advisable, and upon the premises to be sold, or at some public sale as said assignee shall deem best for the interest of said estate, at least twenty days notice of the time place and

terms of sale being first given by affixing up at least three notices; and also by publication in some newspaper nearest the premises, when in the opinion of the assignee, the property is sufficiently valuable to justify the expense of such publication—

Northern District of Illinois, S. S.

I, William H. Bradley Clerk of the District Court of the United States for the Northern District of Illinois do hereby certify the foregoing transcript to be a true and correct copy from the Record of "Bankrupt Decrees" in the District Court of the United States for the District of Illinois, of the Decree of date Oct. 3rd 1842, declaring James B. Campbell a Bankrupt and appointing Wm C. Portwick assignee of the same, and also of the rule in Bankruptcy number Fifty one as prescribed by said Court, as the same remain of Record in my office

In testimony whereof I have hereunto set my hand and affixed the seal of said District Court for the Northern District of Illinois, at my office in Chicago in said Northern District this Twenty seventh day of September in the year of our Lord one thousand eight hundred and fifty nine and of our Independence the 34th Year

Wm H. Bradley Clerk

Seal
CC

State of Illinois }
Tazewell County } J. George H. Hailon Clerk of the
Circuit Court in and for said County do hereby
certify that the foregoing is a true Copy of a decree

filed in a certain cause lately pending in our said
Court wherein Edmund B. Holbrook was plaintiff
and William Cony & Benjamin B. Puttymann
defendants, as fully ^{as the} same appears of record in my
office

Witness my hand and the seal of
our said Court hereunto affixed at
Pekin this 11th day of May A.D. 1861
Geo. H. Harlow Clerk
per A. P. Griswold deputy



Supreme Court, Third Grand Division, at Ottawa: } The People of the State of Illinois,
To the Clerk of the Circuit Court of Tazewell County:

WHEREAS, in a certain plea between Edmund S. Halbrook GREETING.

plaintiff and William Coney & Benjamin S. Prettyman

defendants lately depending in the Circuit Court of said County, wherein judgment was rendered for the said defendants

and against the said plaintiff

and the said plaintiff having duly served a writ of ~~error~~
~~supersedeas~~ ^{certiorari} to reverse
the judgment of said Court, rendered against said plaintiff

as aforesaid, ^{from} the Supreme Court, held at Ottawa, on the first Tuesday after the first Monday in April, and in pursuance of the said writ of error a transcript of the record and the proceedings in the plea aforesaid was transmitted. And, also, whereas it hath been suggested, on the part of said plaintiff

that the said record has been diminished, inasmuch as a certain ^{entire copy of a} decree in bankruptcy in matter of James B. Campbell, and the certificate of the clerk of the District Court of the United States for the Northern District of Illinois, contained in the bill of exceptions, said bill of exceptions dated Sept. 7, 1859, as appears by affidavit on file hath not been sent up; and forasmuch as the said Supreme Court are not satisfied that there is a sufficient record sent in the plea aforesaid, but in the record there is a diminution: YOU ARE, THEREFORE, HEREBY COMMANDED, That, without delay, the said ~~Record last before mentioned~~ therein you cause to be transmitted to the Supreme Court, to be held at Ottawa, on the ~~first~~ ^{now in session} at Ottawa in said State in ~~the next~~ ^{next} without any diminution or addition whatsoever, to the end that speedy justice may be done in the premises, according to law; whereof you are in no wise to fail; and send you then there this writ.

Witness The Hon. JOHN D. CATON, Chief Justice of said Court, and the seal thereof, at Ottawa, this 10th day of May in the year of our Lord one thousand eight hundred and fifty six

L. Leland
Clerk of the Supreme Court.
by J. B. Rice Deputy

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Edmund S. Halbrook
vs

William Boney et al

Writ of Certiorari

Returnable for May 13th

Filed May 13. 1861

L. Leland
Clerk

Supreme Court of Ill., 3^d Division
April Term 1861.

Edmund J. Holbrook }
vs
William Cony & al }

The only point presented in this case is, whether the Court erred in excluding the deed from Bostwick assignee of Campbell to the plff. below.

To this, we say, first, there is no rule of law prescribing that the plaintiff in Ejectment shall introduce in evidence the facts necessary to be proved to make a chain of title, in their chronological order. This deed being evidence tending to prove plff's case, should have been admitted. If, after all the evidence tending to prove plff's case was in, he had failed to make a case, the Court should have decided against him. We think, therefore, as the excluded deed was competent evidence for the plff. the judgment should be reversed.

The real question in the case is, whether the deed of the assignee, decree of bankruptcy & recital of it in the deed,

pass the title, without proof of an order
of the Court fixing the time & place of
Sale.

We claim first, that as the legal title,
to the real estate of the Bankrupt - vests
in the assignee by operation of law, when
the Bankrupt is, by the decree, declared
such, his conveyance must pass the legal
title to a grantee, whether there is any order of
Court directing a sale or not. - Would not
the legal estate subject to the trust be in the heirs
or devisees of the assignee after his death & before his
successor was appointed? If not, where would it be?
- If in the heir, would his deed convey it? We speak
of the naked legal title or fee - and this being
an action of ejectment, such title must
prevail notwithstanding the equities.

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an action of ejectment, such title must
prevail notwithstanding the equities.

By the 3^d Sec. of the Bankrupt Law (Laws of U.S. by Sharswood Vol. 5 p. 2830) the assignee is vested with all the right, title & authority to sell which the bankrupt had before & at the time he became such by the decree, subject to the orders and direction of the Court. This undoubtedly gives the Court the power to control the action of the assignee & to order & direct him how to discharge his trust; but, in the absence of such interference by the Court, we claim that he is to discharge the duty of disposing of the assets of the bankrupt & dividing the proceeds among the creditors in the same manner ~~he~~ would have done it, if he had been appointed to the trust by the bankrupt himself. And a deed made by him on a public or private sale of the estate, vested in him, would pass to a grantee the legal estate & the grantee would hold it until the sale ^{should be} ~~was~~ set aside by some Court having power so to do. Why is it necessary that there should then be an order of Court authorising the sale of real estate or chattels any more than there should be, to commence or defend a suit or to manage the estate. These things

are all to be subject to the order & direction of the Court. It is evident that the assignee may set-off the \$300 worth of property in the proviso of Sec. 3 without a previous order of Court. His decision in this respect is subject to the final decision of the Court, if exception be taken to what he has done. The expression "subject to the order of Court" like the expression "subject to the final decision of the Court" necessarily implies that the assignee may, in both cases, perform the acts, unless his action is interfered with or controlled by some action on the part of the Court.

We claim that this Section confers full power to manage the estate, just as the bankrupt might have done if there had been no decree in relation to him, & that neither a sale, nor the commencement of a suit, nor the defence thereof, nor any other act of management requires a previous order or direction of the Court, but the object of the expression "subject to the order & direction of the Court" is to authorize the Court to control his action, if desirable.

If the Court does make any order or direction as to the sale or other management the assignee must comply, & if the Court orders a time & place of sale, the sale

must be made as provided in Sec. 9.
Whether the above ~~notion~~^{views} be sound or not,
it is clear that the deed, decree & recital
of it, make a prima facie case at least,
if not a conclusive one.

The 15th Sec. provides that the deed of the
assignee & a copy of the decree declaring the
person a bankrupt, with a recital of the
decree in the deed, shall, without any
other proof, be as effectual to pass the title
as a deed by the bankrupt made just
before such decree, would have done.

No proof of an order of the Court directing the
assignee to sell is required. The deed, decree
& recital of it in the deed are all that the law
requires to be evidence that the title of the
bankrupt has passed to the grantee in the
deed. Such evidence is enacted to be full &
complete proof to validate the deed. No proof
of any such preliminary order is necessary.
On the contrary, the Act having provided that
such deed, decree & recital shall be sufficient,
the Court clearly ought not to have excluded
the deed for the reason it did. The ground
upon which the Court excluded the deed
having been stated to be, because there was
no preliminary evidence that the Court
had fixed a time & place of sale, we claim

5 Barb
c
for the reasons aforesaid that the Court below was in error in relation thereto. The Court did not exclude the deed because it did not recite a copy of the decree, but for the other reason above stated only.

Suppose we are wrong in the above views - is the 51st rule a sufficient ordering & appointing of a time & manner of sale by the Court, in compliance with Sec. 9?

There is nothing in the section in relation to place of sale. The time & manner of sale are all that the Court is to order & appoint. The manner probably means whether by auction or at private sale.

It may not, perhaps, be improper to state, that a decision, that an assignee's sale with no other order than the 51st rule, is invalid, would probably destroy all the titles in this State acquired at such sales. The reason assigned why the 51st rule does not authorize the sale is, that fixing the time & manner of the sale is a judicial act & that judicial power cannot be delegated to the assignee. We deny this proposition. If, by Sec. 9, no sale can be made without the Court itself fixing the time & manner, then the Court could not authorize the assignee to make sale of a chose

Supreme Court of Ill. 3^d Division
April Term 1861.

Edmund S Holbrook

vs

William Cony & al

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in action, or an article of personal property, at private sale, without fixing the time, for the section makes no distinction between real and personal property. Having fixed properly the manner of sale of some articles to be at private sale, the authority to sell at the time could not be delegated to the assignee. This, it is considered, would be a delegation of judicial power: & a sale of an article of personal property, under a rule authorizing the assignee to sell it at private sale, at such time as he might deem advisable, or at auction, on giving twenty days notice of the time and place of sale, would pass no title.

We cannot believe that this court will so hold. It seems to be evident, that it was intended by this section, that the court might authorize the assignee to use a discretion.

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as to the time when property
real & personal should be sold.
If the court judicially orders
him to sell on a certain day,
has he no power to adjourn
the sale for want of bidders?

~~If the court judicially orders~~
~~him to sell~~. Could the court
not delegate to him the power
of adjourning the sale to another
day, to be fixed by himself?

Would this be a delegation of
judicial power? We think
not - certainly not, within the
common, or legal definition of
a judicial act. The assignee is
the appointee, and officer of
the court. Subject to its orders
and responsible to it. Not ev-
ery act of his concerning the
bankrupt's estate, is a judicial
act within the purview of
this objection. Something of
discretion must be left in the
officer. It is impracticable
to set forth all the particulars
of "time and manner" in the
order of court - and we
insist that this 51st rule

is within the provisions of
the law, with such strict-
ness as is usually observed
by courts in such cases. The
District and Circuit Courts
(see latter part of Sec 6) have
unlimited power to establish
rules as to all matters in bank-
ruptcy which are required to
be "as simple and brief as
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the public at large", which
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bankruptcy in this state (and
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lated the law, and that the

bona fide purchaser acquired nothing at the sale, because these courts failed to maintain the proper distinction between judicial and ministerial duties? Now this rule is so simple and brief" and so made "to facilitate the use thereof by the public at large" would, (in the language of the Supreme Court of the U.S. Thompson vs. Tinsie 2 Pet. 168) "be a snare to honest men", instead of what it was intended to be.

But let it be granted (for the sake of the argument) that it be necessary to sustain the deed by proof that the court appointed the time and place of sale, or the manner of sale; and that this general rule falls short of doing so = still, we say, and we confidently assert, that the law is, that this error cannot be corrected, or taken advantage of, in a collat.

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is within the provisions of the law, with such strictness as is usually observed by courts in such cases. The District and Circuit Courts (see latter part of Sec 6) have unlimited power to establish rules as to all matters in bankruptcy which are required to be as simple and brief as possible, to the end to avoid all unnecessary expenses, and to facilitate the use thereof by the public at large, which rules would seem to have the force of law. Hence this general rule, which has ever been and is now (and so admitted by defendants in the deed under which they claim) in force as the standing rule of the District court for this state, and under which all sales in bankruptcy in this state (and probably in all of Judge McLean's Circuit) have been made. And shall we now be told that these courts violated the law, and that the

bona fide purchaser acquired nothing at the sale, because these courts failed to maintain the proper distinction between judicial and ministerial duties? Now this rule "so simple and brief" and so made "to facilitate the use thereof by the public at large" would, (in the language of the Supreme court of the U. S. Thompson vs. Talmie 2 Pet. 168) "be a snare to honest men", instead of what it was intended to be.

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eral proceeding. Any amount
 of authority, to this effect,
 can be furnished. We have
 selected those we deemed the
 most applicable, as pertaining
 to proceedings in the inferior
 Probate Courts, and District
 Courts. Showing that the rule
 is applicable to proceedings of
 these courts, as well as others.
 = also decisions of United
 States Courts, which are pecu-
 liarly applicable, because the
 proceedings of a United States
 Court are called in question.
 = And also the decisions of
 this court recognizing the
 principle. We know of
 no adverse decision. As
 said before, the case stands
 different from that of a mere
 naked power - for the assignee
 holds the title voluntarily
 given him by the assignor.
 It is not in any sense a pro-
 ceeding in writum.

The jurisdiction of the
 person is obtained by the par-
 ty's own application - and

there can be no question as to the original jurisdiction of the District Court over the subject matter. That this court attempted to do what the law required in reference to sales of bankrupt's effects ~~cannot be doubted~~ -

~~This makes~~ in the establishment of this 51st ^{is not doubtful} rule. Thus constituted it is the decree of a court of competent jurisdiction, which, according to the authorities, cannot be attacked collaterally for errors or irregularities.

To say, by way of answer, that the court exceeded its authority, or fell short of its duty, in passing such an order - (and that it is therefore void) is a begging of the question, and unavailable. - for it is for the protection of purchasers under decrees and orders erroneously and irregularly entered that the rule is so established. The reason of the rule is obvious

that purchasers are not required to be more learned in the law than the courts:—but on the contrary may rely on the judgments and decrees of tribunals established by law, with confidence—and that the titles obtained shall not be disturbed in after years for the errors of Courts & not their own, at the suggestion of strangers.

That this rule of the District Court (or the law without the rule) has been trusted to, and that all, or nearly all, of the assignee's sales in this District have been made under it, may not be judicially known by this Court:—but it is in fact known to every attorney, and to all others conversant with the proceedings of that Court. The plaintiff has shown his confidence by his purchase. The defendant has shown his confidence by his purchase.

We claim therefore.

- 1st That no prior order of Court is necessary to make a conveyance. By the assignee, pass the title derived from ~~him~~ the bankrupt to real estate - at least for an ejectment, which only tries where the legal title is: and that, if any rule exists, it is a matter only between the Court and its officer - (the assignee) and not for the purchaser -

On this point we call attention to the case in 5 Barb. S.C. 378 Barnes vs. Matteson, where this precise position is taken and maintained.

We call attention also to the 15th Sec. of the Statute, the object of which is to declare the rule of evidence as to deeds - and which, as being special to this subject, should prevail over every other.

2. That the District Court had authority to establish the 5th rule - and that this fully answered

the requirements of the Statute.

3rd And finally, that though said rule be in excess, or fall short of the requirements of the Law - in other words, though the court may have erred in establishing such rule - still the title of a purchaser obtained under a sale in compliance with its decision cannot be disturbed, nor such decree questioned in a collateral proceeding. An error herein (if any) can only be corrected by application to that court, by some party interested, or by appeal to the Circuit Court which right is provided for by the same Law.

The questions raised in this case, concerning an assignee's deed, under the bankrupt Law, are comparatively new - and as yet

probably but little apprehen-
sion has been had upon
them. The defendants have
not furnished us with any
authorities. If they should
hereafter present such to the
court we would be glad
of an opportunity to see
them.

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Holbrook's Canyon

at

Arch for pellets
in canyon

Field May 3, 1861

L. Leland
Clark

Leland's
Canyon for Arch
pellets

1
Hear

To a Circuit Court begun
and held at the Court House
in Pekin, within and for
the County of Tazewell and
State of Illinois on the first
Monday of the month of
June in the year of our
Lord One thousand eight
hundred and fifty nine
Present Honorable James
Harriatt Judge of the 21st
Judicial Circuit of the State
^{composed of the Counties of Jefferson, Tazewell &c}
of Illinois, Hugh Fullerton
State Attorney, Thomas C.
Reese Sheriff and Merrill
C. Young Clerk

Be it remembered, that on the 15th day
of June A.D. 1859, a declaration in Ejectment
was filed in said Court which said declaration
was in the words and figures following, to wit:

State of Illinois } In Circuit Court
Tazewell County } June Term 1859

Edmund S. Halbrook the plaintiff
in this cause by James Roberts his atty

complaints of

2

William Coney the defendant,

For that

whereas the said plaintiff on the first day
of June 1858, was possessed of the following
described lots of land with the appurtenances
situate in said County and described as
follows to wit, Blocks Sixteen, Seventeen
(except lots five and six) Eighteen, Nineteen,
Twenty, Twenty one and Twenty two of
Campbells Durlay and Newhalls addition
to the Town of Pekin, as laid out on the East
half of the South west quarter of Section
Thirty five, Township Twenty five, North of
Range five west of 3^d P.M. which said
premises the plaintiff claims in fee, and
being so possessed thereof afterwards, to wit:
on the first day of May 1859, the said defendant
entered into the said premises and ejected the
said plaintiff therefrom and unjustly
withholds from the said plaintiff the possession
thereof; to the damage of the said plaintiff
of one hundred dollars, and therefore he
sues &c

2^d Count,

For that whereas the said plaintiff on
the first day of May A.D. 1858, was possessed
of certain lots of land situate in said County
and State, to wit:

The three fourths parts, undivided
of the said tracts of land described in the above

3

first count. which said premises said
 plaintiff claims in fee, and being so
 possessed thereof afterwards, to wit, on the
 first day of June 1859, the said defendant
 entered into the said premises, and ejected
 the said plaintiff therefrom, and unjustly
 withholds from the said plaintiff the possession
 thereof to the damage of the said plaintiff
 of One hundred dollars wherefore he sues

James Roberts
 Atty for plaintiff

To the above named defendant
 You are hereby notified, that the
 declaration, with a copy whereof you
 are now herewith served, and to which this
 notice is subjoined will be filed on the 10th
 day of June 1859 in the Circuit Court of
 Tazewell County Illinois, and that upon
 filing the same a rule will be entered
 requiring you to appear and plead to the
 said declaration, within twenty days after
 the entry of such rule; and that if you neglect
 so to appear and plead, a judgment by default
 will be entered against you, and the plaintiff
 will recover possession of the premises
 described in said declaration Dated this 11th
 day of June AD 1859

James Roberts
 atty for Plaintiff

4

State of Illinois }
 Tazewell County } p.

J. B. Reeves being duly sworn says that he did on the 13th day of June A.D. 1859 serve this declaration by delivering a true copy of the same to the within to within named William Boney on the above day, and I am informed and believe that said Boney is now in the possession of said premises

Subscribed and sworn
 to before me this 14th 1859
 McYoung Clerk

J. B. Reeves

And now afterwards, to wit: at a Term of the Circuit Court begun and held at the Court house in Pekin within and for the County of Tazewell and State of Illinois on the first Monday of the month of June A.D. 1859, and on the 15th day of said month it being the 9th day of said Term, the following proceedings were had, to wit:

Edmund S. Holbrook

vs
 William Boney

In Ejectment

Now comes the Plaintiff by his Attorney Roberts and the defendant by B. S. Pettyman and on his

5 motion leave is granted him to defend as Landlord. Whereupon he filed his plea of not guilty of the supposed trespass and ejectment in said plaintiffs declaration named, in manner and form therein set forth, and it appearing to the satisfaction of the Court, that a copy of the declaration has been regularly served upon the defendant in this cause a rule is entered upon defendant to plead in twenty days, and this cause is continued.

And now afterwards, to wit: on the same day a plea was filed in said cause, which said plea was in the words and figures following, to wit:

Edmund S. Halbrook	Tazewell Circuit Court June Term A.D. 1859 In Ejectment
"	
" William Conner & B. S. Pettyman defendants	
" as Landlords	

And the said
defendant B. S. Pettyman comes and
defends the force & injury where & says
action now because he says he is not guilty
of the said supposed trespass & ejectment
in the said plaintiffs declaration named
in manner and form as ^{the same is} therein set forth

6 "and of this he puts himself upon
"the country
" Prettyman Pro Se

And now afterwards, to wit: at
a Term of the Circuit Court begun
and held at the Court House in Pekin
within and for the County of Tazewell
and State of Illinois on the first Monday
of the month of September A.D. 1859. Present
Hon James Harriott Judge of the 21st
Judicial Circuit of the State of Illinois
Hugh Fullerton States Attorney Thomas
C. Reuss Sheriff and Murriel C. Young
Clerk. the following proceedings were
had on the 9th day of said month it
being the 5th day of said Term, to wit:

Edmund S. Holbrook }
vs } In Ejusdem
William Concy et al }

Now on this day
come the parties by their attorneys, and
on motion of plaintiff pro se this cause
is continued with leave to amend declaration

And now afterwards, to wit: at
a Term of the Circuit Court, begun

7

and held at the Court House in Tipton
within and for the County of Tazewell
and State of Illinois on the first Monday
of the month of February A.D. 1860, and
on the 9th day of said month it being
the 4th day of said Term. Present, Hon
James Harriatt Judge of the 21st Judicial
Circuit of the State of Illinois, Hugh
Fullerton State Attorney, Thomas C
Reeves Sheriff and Merrill C. Young
Clerk, the following proceedings were
had, to wit:

Edmund S. Walbrook }
William Coney et al } In Ejctment

And now on this
day came the parties by their Attorneys
and a Jury having been waived, by
consent this cause is tried by the Court
and the Court having heard the allegations
and proofs of parties and argument
of Counsel thereon is of opinion that
the defendant is not guilty of unlawfully
withholding the premises in the Plaintiffs
declaration mentioned. It is therefore
ordered and adjudged by the Court
that the defendant recover of said
Plaintiff the costs and charges by him

8 about his defence in this suit expended
and that execution issue therefor

And now afterwards, to wit: on the
27th day of said month of February A.D. 1860
it being the 19th day of said Term a Bill
of Exceptions was signed and filed in said
cause, which said Bill of exceptions was in
the words and figures following, to wit:

State of Illinois } In the Tazewell Circuit
Tazewell County } Court February Term A.D. 1860

Edmund S. Holbrook }
vs } Ejectment
William Cooney &
Benjamin S. Pettyman }

Be it known that
on the trial of this cause by the Court a Jury
being waived, on one of the days of said
Term that Plaintiff in order to sustain
the issue on his part, and that Plaintiff
and defendants claimed title to the
premises described in the declaration
from a common source, to wit:

James B. Campbell, a Bankrupt
by William C. Bostwick assignee was
in evidence without objection, in the

5

motion leave is granted him to defend as Landlord. Whereupon he filed his plea of not guilty of the supposed trespass and ejectment in said plaintiffs declaration named, in manner and form therein set forth, and it appearing to the satisfaction of the Court, that a copy of the declaration has been regularly served upon the defendant in this cause a rule is entered upon defendant to plead in twenty days, and this cause is continued

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Edmund S. Halbrook	Tazewell Circuit Court June Term AD 1859 In Ejectment
" William Conner &	
" B. S. Prettyman defendant	
" as Landlord	

And the said defendant B. S. Prettyman comes and defends the force & injury when &c & says action now because he says he is not guilty of the said supposed trespass & ejectment in the said plaintiffs declaration named in manner and form as ^{the same is} therein set forth

6 "and of this he puts himself upon
"the country
" Prettyman Pro Se

And now afterwards, to wit: at
a Term of the Circuit Court begun
and held at the Court House in Pekin
within and for the County of Tazewell
and State of Illinois on the first Monday
of the month of September A.D. 1859. Present
Hon James Harriott Judge of the 21st
Judicial Circuit of the State of Illinois
Hugh Fullerton States Attorney Thomas
C. Reuss Sheriff and Merrill Clary
Clerk. the following proceedings were
had on the 9th day of said month it
being the 5th day of said Term, to wit:

Edmund S. Holbrook }
William Coney ^{vs} ital } ex Ejtment

Now on this day
come the parties by their attorneys, and
on motion of plaintiff pro se this cause
is continued with leave to amend declaration

And now afterwards, to wit: at
a Term of the Circuit Court, begun

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and held at the Court House in Jekin
within and for the County of Tazewell
and State of Illinois on the first Monday
of the month of February A.D. 1860. and
on the 9th day of said month it being
the 4th day of said Term. Present, Hon
James Harriatt Judge of the 21st Judicial
Circuit of the State of Illinois, Hugh
Fullerton State Attorney, Thomas C
Reeves Sheriff and Murville C. Young
Clerk, the following proceedings were
had, to wit:

Edmund S. Halbrook }
William Coney et al } In Ejectment

And now on this
day came the parties by their Attorneys
and a Jury having been waived, by
consent this cause is tried by the Court
and the Court having heard the allegations
and proofs of parties and argument
of Counsel thereon is of opinion that
the defendant is not guilty of unlawfully
withholding the premises in the Plaintiffs
declaration mentioned. It is therefore
ordered and adjudged by the Court
that the defendant recover of said
Plaintiff the costs and charges by him

8 about his defence in this suit expended
and that execution issue therefor

And now afterwards, to wit: on the
27th day of said month of February A.D. 1860
it being the 19th day of said Term a Bill
of Exceptions was signed and filed in said
cause, which said Bill of exceptions was in
the words and figures following, to wit:

State of Illinois } In the Tazewell Circuit
Tazewell County } Court February Term A.D. 1860

Edmund S. Holbrook }
William Cooney & } Ejectment
Benjamin S. Pettyman }

Be it known that
on the trial of this cause by the Court a Jury
being waived, on one of the days of said
Term that Plaintiff in order to sustain
the issue on his part, and that Plaintiff
and defendants claimed title to the
premises described in the declaration
from a common source, to wit:

James B. Campbell, a Bankrupt
by William C. Bortwick assignee and
in evidence without objection, in the

9 words and figures as follows, to wit:

" W. C. Postwick assignee } No 14,082
" to }
" Wm B. Doolittle } Recorded April 25th 1853

" Whereas by a decree
" of the Honorable District Court, of the
" United States of America for the district
" of Illinois, sitting as a Court of Bankrupt-
" cy, James B. Campbell of the County of
" Jo Davis in said District was decreed a
" Bankrupt, which said decree bears date
" the third day of October A.D. 1842, and is
" in the words and figures following, to wit:

District Court of the United States }
" For the District of Illinois } In the
" matter of the Petition of James B. Campbell }
" to be declared a Bankrupt and to be
" discharged from his debts, On hearing the
" petition of the said James B. Campbell
" filed in this Court 22^d August A.D. 1852, praying
" to be declared a Bankrupt in pursuance of
" the act of Congress entitled "An act to
" establish a uniform system of Bankruptcy
" throughout the United States" and it
" appearing satisfactorily to the Court, that
" notice has been published in pursuance
" of the previous order of this Court, and no

sufficient cause being shown to the
 contrary, It is therefore ordered, adjudged
 and decreed, that the said James B. Campbell
 be deemed a bankrupt within the provision
 of said act, and it is further ordered and
 adjudged that William C. Postwick of
 the County of Jo Daviess be and hereby
 is appointed assignee of said Bankrupt
 upon his entering into before a Commissioner
 and filing with the clerk of the Court a
 penal Bond in the sum of Dollars
 to the United States, with two or more
 securities to be approved by the Commissioner
 of the County wherein the Bankrupt resides
 conditioned for the due and faithful discharge
 of all his duties as such assignee, and his
 compliance with the orders and directions of
 the Court, and whereas the said William
 C. Postwick appointed assignee of the
 said James B. Campbell a Bankrupt
 in and by virtue of the decree aforesaid
 have complied with the provision of said
 decree and have filed with the clerk of said
 Court my sufficient bonds in the penal sum
 of Five Hundred Dollars with two sufficient
 securities approved by the proper commissioner
 and have complied with all other the
 requisitions and directions of said decree
 and with all the rules in Bankruptcy

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of said Honorable Court, so far as the
same apply to or are binding and incumbent
upon me, have as such assignee sold the
property hereinafter described at public
auction in Galena in said County of Jo
Davis having first duly advertised the
same according to law, and said sale being
made in pursuance of a decree of said District
Court dated 15th May 1851, and which
said decree is in the words and figures
following, to wit;

In the matter of the petition
of William C. Bostwick
assignee in Bankruptcy of
James B. Campbell
declared a Bankrupt

In the United States
District Court within
and for the District and
State of Illinois.

Petition for sale of Real Estate of Bankrupt
And now on this day, this day
this case coming on to be heard on the
petition of William C. Bostwick, assignee
of James B. Campbell a Bankrupt, and
upon the exhibits and proofs. And it
appearing to the Court, that the said James
B. Campbell has an interest or claim
in and to the following Real Estate situate
in the County of Tazewell and State of
Illinois, to wit: (Here follows a description
of the tracts of land and lots of ground)

12 in this deed hereafter mentioned and
described, including the whole and every
the tracts of land and lots of ground
hereinafter described) which said lands
were not contained in the Schedule
filed in said Court by said Bankrupt.
It is therefore ordered adjudged and
decreed by said Court, that the said
Assignee William C. Bostwick proceed
to sell all the estate, right, title and
interest in him vested as such assignee
in and to the lands above specified in
such manner, upon such terms and at such
times as is specified in the rules of this
Court heretofore made and still in
force in regard to the sale of the real
estate of Bankrupts, It is further
ordered that said assignee make report
of his doings herein to this Court at the
earliest opportunity;

To which sale William
P. Doolittle of Tazewell County State
of Illinois hereinafter named, became the
purchaser of said lots and lands and
at the prices hereinafter mentioned, he
being the highest and best bidder for
the same, the said property lots and
lands and Real Estate are situated
designated and described as follows,

13 to wit: Seventeen lots in the Town of
Pekin in Tazewell County State of
Illinois viz Lot to fifteen in Block to
Sixty two, Lot to four, in Block to Sixty
three Lots to nine, Ten, Eleven, and Twelve
in Block Sixty nine, Lot to Thirteen
to Seventy, Lots to One two three and
four in Block to Seventy eight, Lots
to five six seven eight and nine in
Block to Eighty two and Water Lot to
Eighty one each of which said Seventeen
lots were struck off separately to the
said William B. Doolittle at the sum
and price of ten cents each, also the
following described Lots in Campbells
Dunley & Newhalls addition to the Town
of Pekin aforesaid in said Tazewell County
being three hundred and eighty in number
to wit: Lots to One, two, three, four, five, six,
seven, eight, nine, ten eleven and twelve
in Block to One, Lots to one, two, three, four,
five, six, seven, eight, nine, ten, eleven,
twelve, thirteen and fourteen in Block
to Two, Lots one, two, three, four, five, six
seven, eight, nine, ten, eleven and twelve
in Block to Three, Lots, one, two, three,
four, five, six, seven, eight, nine, ten,
eleven and twelve in Block to Four, Lots
to One, two, three, four, five, six, seven, eight,

" nine, ten, eleven, twelve, thirteen and
 " fourteen in Block to Five, Lots one,
 " two, three, four, five, six, seven, eight,
 " nine, ten, eleven and twelve in Block
 " to Six, Lots one two, three, four, five, six,
 " seven, eight, nine, ten, eleven and
 " twelve in Block to Seven, Lots ^{No} One, two
 " three, four, five, six, seven, eight, nine
 " ten eleven and twelve, thirteen and fourteen
 " in Block to Eight, Lots to, one, two, three,
 " four, five, six, seven, eight, nine, ten,
 " eleven & twelve in Block to Nine, Lots to,
 " one, two three, four, five, six, seven, eight, nine
 " ten eleven & twelve in Block to Ten, Lots to,
 " one, two, three, four, five, six, seven, eight
 " nine, ten, eleven, twelve, thirteen & fourteen
 " in Block to Eleven, Lots to one, two, three
 " four, five, six, seven, eight, nine, ten,
 " eleven and twelve in Block to Twelve,
 " Lots to one, two, three, four, five, six, seven,
 " eight, nine, ten, eleven and twelve in Block
 " to Thirteen, Lots to one, two, three, four,
 " five, six, seven, eight, nine, ten, eleven,
 " twelve, thirteen and fourteen, in Block
 " to fourteen, Lots to one, two, three, four
 " five, six, seven, eight, nine, ten, eleven,
 " twelve, in Block to Fifteen, Lots to one,
 " two, three, four, five, six, seven, eight
 " nine, ten, eleven and twelve in Block

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"to Sixteen, Lots to one, two three, four
 "five, six seven, eight, nine, ten, eleven
 "twelve, thirteen and fourteen, in Block
 "to Seventeen, Lots one, two, three, four
 "five, six, seven, eight, nine, ten eleven
 "twelve in Block to Eighteen, Lots to one
 "two, three, four, five, six, seven, eight
 "nine, ten, eleven and twelve in Block
 "to Nineteen, Lots, to one, two, three, four
 "five six, seven, eight, nine, ten, eleven
 "twelve, thirteen and fourteen in Block
 "to Twenty, Lots to one, two, three, four
 "five, six, seven, eight, nine, ten, eleven
 "and twelve in Block to Twenty one, Lots
 "one, two, three, four, five, six, seven, eight
 "nine, ten, eleven and twelve in Block to
 "Twenty two, Lots to one, two, three, four,
 "five, six, seven, eight, nine, ten, eleven
 "twelve, thirteen, and fourteen in Block
 "to Twenty three, Lots to one, two, three, four
 "five, six, seven, eight, nine, ten, eleven and
 "twelve in Block ^{to} Twenty four, Lots to one,
 "two, three, four, five, six, seven, eight, nine,
 "ten, eleven and twelve in Block to Twenty five
 "Lots ^{to} one, two, three, four, five, six, seven, eight
 "nine, ten, eleven, twelve, thirteen and
 "fourteen in Block to Twenty six, Lots to
 "one, two three, four, five, six, seven, eight,
 "nine, ten, eleven and twelve in Block to

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Twenty seven, Lots to One, two, three, four,
 five, six, seven, eight, nine, ten, eleven and
 twelve in Block to Twenty eight, Lots to
 one, two, three, four, five, six, seven, eight
 nine, ten, eleven, twelve, thirteen and
 fourteen in Block to Twenty nine, Lots
 to One, two, three, four, five, six, seven, eight
 nine, ten, eleven and twelve in Block to
 Thirty, each of which said 380 lots were
 struck off separately to the said William
 B. Doolittle at the sum and price of
 ten cents each, also the east half of the South
 West quarter of Section thirty five in Township
 to Twenty five of Range to five west of the
 third principal meridian in said Tazewell
 County Illinois, also the west half of the
 North east quarter of Section to Thirty five
 Township to Twenty five, North of Range
 to Five west of the third principal meridian
 in said, Tazewell County, the said two
 tracts last named having been struck off
 separately to said William B. Doolittle for
 the sum and price of Three dollars and ten
 cents each, also the following described
 Real Estate situate in the County of LaSalle
 in said State of Illinois, to wit: the undivided
 five acres part of the east half of the North
 East quarter of Section to 18 in Township
 to 33 North of Range to one east of the 3^d

17 principal meridian, which said undiv-
-ed five acres were struck off to the said
"William B. Doolittle for the sum and
"price of four dollars and ten cents, Now
"therefore know all men by these presents
"that I William C. Postwick as assignee of
"the said James B. Campbell, a bankrupt
"as aforesaid in consideration of the
"sum of Fifty dollars to me in hand
"paid by the said William B. Doolittle
"the receipt whereof is hereby acknowledged
"being the aggregate of said several bids as
"aforesaid, do as such assignee
"sell and convey unto the said William
"B. Doolittle, and to his heirs and assigns
"all the right, title and interest in me
"vested as such assignee in and to the
"lots, lands, and real estate hereinbefore
"specified designated and described
"at the date of said sale, to wit: this 17th
"day of June AD 1851.

" Wm C. Postwick Seal
" Assignee in Bankruptcy of James B. Campbell

State of Illinois }
" Jo Daviess County } Before me the
" undersigned Clerk of the County Court
" in said County & State personally came
" this day William C. Postwick to me

personally known to be the identical
 person described in, and who executed
 the foregoing deeds, and acknowledged
 to me that he had executed the same
 freely voluntarily and for the uses and
 purposes therein mentioned

Witness my hand and official
 Seal this thirteenth day of
 August A.D. 1851,
 Attest Richard Seal Clerk

Plaintiff also read in evidence
 without objection for the same
 purpose a deed of John A. Jones
 to defendant Prettyman, produced
 by Prettyman on notice, in the words
 and figures following, to wit:

John A. Jones Master Chancery } No 18,666
 Benjamin E. Prettyman } Recorded

January 8th 1856

Know all men by
 these presents, that whereas at a term of
 the Circuit Court of the County of
 Tazewell and State of Illinois begun
 and held at Pekin on the first Monday
 of the month of October in the year of
 our Lord One thousand eight hundred

19 " and fifty five, Present the Hon David
" Davis Judge of the eighth Judicial
" Circuit composed of the Counties of
" Sangamon, McLean, De Witt, Tazewell
" &c and on the 15th day of said month
" being the 10th day of said term, Amos
" Lee Merriman obtained a final decree
" against Halsey Lee Merriman, Harriet
" P. Merriman, Simon W. Merriman,
" Sidney Pulsifer, Guardian of Halsey
" Lee Merriman, Harriet P. Merriman and
" Simon W. Merriman, Amaziah Doolittle
" George W. Doolittle, Mary M. Doolittle,
" Ervin B. Doolittle, Jesse A. Mason,
" Guardian of said Mary M. Ervin B.
" Doolittle, Martha Doolittle Mary Doolittle,
" and Middleton Tackabury executor
" of William B. Doolittle deceased in the
" words and figures as follows, to wit:
" Tazewell Circuit Court
" October Term A.D. 1855.

" Amos L. Merriman

" Halsey L. Merriman, Harriet P.
" Merriman, Simon L. Merriman
" Sidney Pulsifer Guardian of
" Halsey Lee Merriman, Harriet
" P. Merriman, and Simon W.
" Merriman, Amaziah Doolittle

20 "George W. Doolittle, Mary M.
"Doolittle, Irvin B. Doolittle,
"Jesse A. Tason Guardian of
"said Mary M and Irvin B.
"Doolittle, Martha Doolittle
"and Middleton Tachaberry
"executor of William B. Doolittle
"deceased

And now
"on this day this cause come on to be
"heard upon the report of the Master to
"whom this cause was referred to take
"proof of the allegations in the Bill
"contained and to state the account
"between the parties, and it appearing
"to the Court that Halsey O. Merriam
"and Amos S. Merriam, were partners
"under style of H. O. and A. S. Merriam
"and that said A. S. Merriam is the
"survivor of said copartnership concern,
"that said H. O. & A. S. Merriam and
"William B. Doolittle purchased the
"lands in said Bill described on account
"said Doolittle having one half interest in
"the same and said H. O. & A. S. Merriam
"having one half interest in the same,
"that William B. Doolittle has become
"deceased, and that Middleton Tachaberry
"is executor of the last will and testament

21 of said William B. Doolittle, that a
portion of said lands were purchased
in the name of said William B. Doolittle
and a portion in the name of said
Halsey O. Merriman that the payments
were made at the time of the purchase
sometimes by said H. O. Merriman and
A. S. Merriman, and sometimes by said
Doolittle and in some of the purchases
said William B. Doolittle and said
complainant individually gave their
notes, which notes were paid by said
H. O. and A. S. Merriman, and it
further appearing to the Court, that
the estate of the said William B. Doolittle
has not received from the rents and profits
accrued from said land sufficient to
pay all disbursements by said Doolittle
expended or paid out in and about said
purchases, and that there is now due to
said complainant as survivor of
Halsey O. Merriman from said joint
concern for and on account of said
purchase and expenses the sum of one
hundred and fifty one dollars and
forty five cents, and that there is due
to said complainant as survivor of
Halsey O. Merriman from said joint
concern for and on account of said purchase

92. and expenses, the sum of One thousand
" two hundred and ten dollars and thirty
" nine cents; and that there is no personal
" property belonging to said Concern. It
" is therefore ordered, adjudged and
" decreed that the Master in Chancery of
" Tazewell County, proceed to sell the
" Real Estate described in said Bill, to wit:
" Lot number fourteen Block number forty
" four, lot number fifteen, Block number
" Sixty two, lot number four Block number
" Sixty three; lots number one and two, Block
" number Sixty six; lots number nine,
" ten, eleven and twelve in Block number
" sixty nine; lots number five, six, seven and
" eight, Block number Seventy one; lots
" number one, two, three and four Block
" number Seventy eight; lots number
" five, six, seven, eight and nine Block
" number eighty two; and Water lot
" number eighty one; all in the
" City of Pekin, also the following
" lots in Campbell, Dunley and
" Newhalls addition to the Town of Pekin,
" to wit: lots number one, two three four
" five six, seven, eight, nine, ten
" eleven and twelve Block number one;
" lots number one, two, three, four, five
" six, seven, eight, nine, ten, eleven

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twelve thirteen and fourteen Block
" number two; lots one, two, three, four,
" five, six, seven, eight, nine, ten, eleven
" and twelve in Block number three,
" lots number, one, two, three, four, five
" six, seven, eight, nine, ten, eleven
" and twelve in Block number four,
" lots number one, two, three, four, five,
" six, seven, eight, nine, ten, eleven
" twelve, thirteen and fourteen in Block
" number five; lots number one, two,
" three, four, five, six, seven, eight, nine
" ten, eleven and twelve in Block number
" Six; lots number one, two, three, four
" five, six, seven, eight, nine, ten, eleven
" and twelve in Block number Seven,
" lots number one, two, three, four, five
" six, seven, eight, nine, ten, eleven
" twelve, thirteen and fourteen in Block
" number eight; lots number one, two
" three, four, five, six, seven, eight, nine
" ten, eleven and twelve in Block number
" Nine; lots number one, two, three, four
" five, six, seven, eight, nine, ten, eleven
" and twelve in Block number ten;
" lots number one, two, three, four, five,
" six, seven, eight, nine, ten, eleven
" twelve, thirteen and fourteen in
" Block number eleven; lots number

one, two, three, four, five, six, seven, &
 eight, nine, ten, eleven and twelve
 in Block number twelve; lots number
 one, two, three, four, five, six, seven,
 eight nine, ten, eleven and twelve
 in Block number thirteen; lots number
 one, two, three, four, five, six, seven,
 eight, nine, ten, eleven, twelve, thirteen
 and fourteen in Block number fourteen;
 lots number one, two, three, four, five
 six, seven, eight, nine, ten, eleven
 and twelve in Block number fifteen;
 lots number one, two, three, four, five
 six, seven, eight, nine, ten, eleven
 and twelve in Block number Sixteen;
 lots number one, two, three, four,
 five, six, seven, eight, nine, ten
 eleven, twelve, thirteen and fourteen
 in Block number Seventeen; lots
 number one two three, four, five, six,
 seven, eight, nine, ten, eleven and
 twelve in Block number Eighteen;
 lots number one, two, three, four, five
 six, seven, eight, nine, ten, eleven and
 twelve in Block number nineteen;
 lots number one, two, three, four, five,
 six, seven, eight, nine, ten, eleven,
 twelve, thirteen and fourteen in
 Block number twenty; lots number

25 " one two three, four, five, six, seven, eight
" nine, ten, eleven and twelve in block
" number twenty one; lots number one;
" two, three, four, five, six, seven, eight,
" nine, ten, eleven and twelve in block
" number twenty two; lots number one,
" two, three, four, five, six, seven, eight,
" nine, ten, eleven, twelve, thirteen and
" fourteen in Block number twenty three;
" lots number one, two, three, four, five, six,
" seven, eight, nine, ten, eleven and twelve
" in Block number twenty four; lots number
" one, two, three, four, five, six, seven, eight
" nine, ten eleven and twelve in Block
" number twenty five; lots number one,
" two, three, four, five, six, seven, eight, nine,
" ten, eleven, twelve, thirteen and fourteen
" in Block number twenty six; lots number
" one, two, three, four, five, six, seven, eight
" nine, ten, eleven and twelve in Block
" number twenty seven; lots number
" one, two, three, four, five, six, seven,
" eight, nine, ten, eleven and twelve in
" Block number twenty eight; lots number
" one, two, three, four, five, six, seven, eight
" nine, ten, eleven, twelve, thirteen and
" fourteen in Block number twenty nine;
" lots number one two three, four, five, six,
" seven, eight, nine, ten eleven and twelve

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in Block number thirty; also the west
 half of the North east quarter of Section
 number thirty five; Township number
 twenty five, North range five west of
 the third principal meridian; also the
 east half of the South west quarter of Section
 number thirty five, Township number
 Twenty five North range number five
 west of the third principal meridian
 all of the County of Tazewell and State
 of Illinois; also the undivided five acres
 part of the East half of the North east
 quarter of Section number Sixteen
 Township number thirty three; North
 range one, east of the third principal
 meridian in the County of La Salle in
 said State; also the South half of Section
 number ten, in Township number eight,
 North range number five east of the fourth
 principal meridian in Peoria County
 or so much thereof as may be necessary
 to satisfy said sum above mentioned,
 to wit: Thirteen hundred and sixty
 one $\frac{84}{100}$ dollars with interest from
 the date of this decree, at Public
 vendue at the front door of the
 Court House, in the City of Pekin
 County of Tazewell and State of
 Illinois, upon the first day of December

27 " A D 1855, between the hours after
" O'clock in the forenoon and four
" O'clock in the afternoon after giving
" at least thirty days notice by publi-
" cation in some public newspaper
" printed and published in said
" County of Tazewell for four successive
" weeks, which sale shall be to the highest
" and best bidders upon the following
" terms, to wit: one fourth cash and the
" balance in two equal payments
" of six and twelve months with
" interest, and said Master is further
" ordered and authorized to execute
" to the purchaser or purchasers at such
" sale, Deeds for the premises sold—
" It is further ordered, that the costs of
" this proceeding be first paid out of
" the proceeds of such sale, It is
" further ordered that said Master
" make a full report of his doings at
" the next term of this Court"

" As will more fully appear from
" the original decree filed of record
" in said cause in said Court, and
" whereas pursuant to said decree
" said Master did give at least thirty
" days previous public notice of
" the time, place and terms of said sale

28, for four successive weeks in the
"Gazette Weekly Mirror a Newspaper
printed and
published in said Tazewell County
and on the first day of December
in the year of our Lord, one thousand
eight hundred and fifty five, at
the front door of the Court House
in Pekin between the hours of ten
o'clock A.M. and four o'clock P.M.,
expose the premises herein described
in said decree to the highest and
best bidder, and that Benjamin
S. Prettyman being the highest
and best bidder became the purchaser
of the following described premises
in said decree described; to wit: -
lots number one, two, three, four, five
and six in Block number three for
the sum of sixty five cents each,
also of lots number one, two, three,
four, five, six, seven, eight, nine,
ten, eleven, and twelve in Block
number four; for the sum of seventy
five cents each; also of lots number
one, two, three, four, five, six, seven
eight, nine, ten, eleven and twelve
in Block number Seven for the
sum of One dollar and five cents
each, also of lots number one,

29 "two, three, four, five, six, seven, eight
"nine, ten, eleven, twelve, thirteen and
"fourteen in Block number eight
"for the sum of Seventy cents each,
"also of lots number one, two, three,
"four, five, six, seven, eight, nine,
"ten, eleven and twelve in Block
"number nine for the sum of fifty
"cents each; also of lots number, one,
"two, three, four, five, six, seven, eight
"nine, ten, eleven and twelve in Block
"number ten for the sum of fifty cents
"each; also of lots number, one, two,
"three, four, five, six, seven, eight,
"nine, ten, eleven, twelve, thirteen
"and fourteen in Block number
"eleven for the sum of sixty cents each,
"also of lots number, one, two, three
"four, five, six, seven, eight, nine
"ten, eleven and twelve in Block
"number twelve for the sum of
"Seventy cents each, also of lots
"number one, two, three, four, five,
"six, seven, eight, nine, ten, eleven
"and twelve in Block number
"thirteen for the sum of seventy cents
"each; also of lots number one, two,
"three, four, five, six, seven, eight,
"nine, ten, eleven, twelve, thirteen

and fourteen in Block number
 fourteen for the sum of sixty cents
 each; also of lots number one, two
 three, four, five, six, seven, eight
 nine, ten, eleven and twelve in
 Block number fifteen for the sum
 of fifty cents each; also of lots number
 one, two, three, four, five, six, seven,
 eight, nine, ten, eleven and twelve
 in Block number Sixteen, for the
 sum of Sixty cents each; also of
 lots number one, two, three, four, five
 six, seven, eight, nine, ten, eleven
 twelve, thirteen and fourteen in Block
 number Seventeen for the sum of
 Sixty cents each; also of lots number
 one, two, three, four, five, six, seven,
 eight, nine, ten, eleven and twelve
 in Block number eighteen for the
 sum of sixty cents each; also of
 lots number one, two, three, four,
 five, six, seven, eight, nine, ten
 eleven and twelve in Block number
 nineteen for the sum of Sixty cents
 each; also of lots number one two
 three four, five, six, seven, eight,
 nine, ten, eleven, twelve, thirteen
 and fourteen in Block number
 twenty for the sum of Sixty cents each

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" also of lots number one, two, three,
 " four, five, six, seven, eight, nine
 " ten, eleven and twelve in Block
 " number twenty one for the sum of
 " sixty cents each; also of lots number
 " one two, three, four, five, six, seven
 " eight, nine, ten, eleven & twelve in Block
 " number twenty two for the sum of
 " sixty cents each; also of lots number
 " one, two, three, four, five, six, seven,
 " eight, nine, ten, eleven, twelve, thirteen
 " and fourteen in Block number twenty
 " three, for the sum of sixty cents each;
 " also of lots number one, two, three four
 " five, six, and seven in Block number
 " Twenty six for the sum of sixty cents
 " each; also of lots number one, two
 " three, four, five & six in Block number
 " twenty seven for the sum of sixty cents
 " each; also of lots number one, two
 " three, four, five and six in Block
 " number twenty eight for the sum
 " of sixty cents each; also of lots
 " number one, two, three, four, five,
 " six and seven in Block number
 " twenty nine for the sum of sixty cents
 " each; all in Campbell Durley and
 " Newhall's addition to the City of Pekin
 " County of Oazewell and State of Illinois

and for the west half of the North
east quarter section number thirty
five, township number twenty five
(25) North Range number five west
of the third principal meridian,

Benjamin S. Prettyman bid the
sum of Eighteen dollars per acre,
and he being the highest and best
bidder, said tract of land was
struck off to him at that price, said
lots and land, being all and each
struck off to him severally one by one.

Now therefore I, John. S. Jones
Master in Chancery of said Tazewell
County, by virtue of said decree
and the proceedings thereon had,
and in the consideration of the
sum of Sixteen hundred and three
dollars and seventy cents (\$1600⁷⁰/₁₀₀) the
aggregate amount of said purchase
the receipt whereof is hereby acknow-
ledged, have granted, bargained and
sold; and by these presents do
grant, bargain and sell unto
the said Benjamin S. Prettyman
and his heirs and assigns, all
the following described real estate
lying, being & situate in the
County of Tazewell and State of

"Illinois; to wit:-

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"Lots number one,
"two, three, four, five and six, in
"Block number three; Lots number
"one, two, three, four, five, six, seven,
"eight, nine, ten, eleven and twelve
"in Block number four; Lots number
"one, two, three, four, five, six, seven,
"eight, nine, ten, eleven and twelve
"in Block number seven; Lots
"number one, two, three, four, five,
"six, seven, eight, nine, ten, eleven,
"twelve, thirteen and fourteen in
"Block number eight; Lots
"number one, two, three, four, five,
"six, seven, eight, nine, ten, eleven
"and twelve in Block number
"nine; Lots number one, two,
"three, four, five, six, seven, eight,
"nine, ten, eleven and twelve in
"Block number ten; Lots number
"one, two, three, four, five, six, seven
"eight, nine, ten, eleven, twelve
"thirteen and fourteen in Block
"number eleven; Lots number
"one, two, three, four, five, six,
"seven, eight, nine, ten, eleven
"and twelve in Block number
"twelve; Lots number one, two

34 "three, four, five, six, seven, eight
"nine, ten, eleven and twelve in
"Block number thirteen; Lots
"number one, two, three, four, five
"six, seven, eight, nine, ten, eleven
"twelve, thirteen and fourteen in
"Block number fourteen; Lots
"number one two, three four, five
"six, seven, eight, nine, ten, eleven
"and twelve in Block number
"fifteen; Lots number one, two
"three, four, five, six, seven, eight, nine
"ten, eleven and twelve in Block
"number sixteen; Lots number
"one, two, three, four, five, six, seven
"eight, nine, ten, eleven, twelve,
"thirteen and fourteen in Block
"number seventeen; Lots number
"one, two, three, four, five, six, seven,
"eight, nine, ten, eleven & twelve in
"Block number eighteen; Lots
"number one, two, three, four, five,
"six, seven, eight, nine, ten, eleven,
"and twelve in Block number nineteen;
"Lots number one, two, three, four,
"five, six, seven, eight, nine, ten,
"eleven, twelve, thirteen and fourteen
"in Block number twenty; Lots
"number, one, two, three, four, five

35 six, seven, eight, nine, ten, eleven
and twelve in Block number
twenty one; Lots number one,
two, three, four, five, six, seven,
eight, nine, ten, eleven and twelve
in Block number twenty two;
Lots number one, two, three, four,
five, six, seven, eight, nine, ten
eleven, twelve, thirteen and fourteen
in Block number twenty three;
Lots number one, two, three, four,
five, six & seven in Block number
twenty six; Lots number one, two, three
four, five & six, in Block number twenty
seven; Lots number one, two, three
four, five & six in Block number
twenty eight; Lots number one
two, three, four, five, six & seven in
Block number twenty nine, all
in Campbell Durley and Newhall,
addition to the City of Pikes;
and also the West half of the North
east quarter of Section number
thirty five, Township number
twenty five, North Range number
five, West of the third principal
meridian.

I have and to hold the
same unto him the said Benjamin

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" S. Prettyman and his heirs and
" assigns forever. In testimony
" whereof I have hereunto set my
" hand and Seal this 1st day of December
" 1855

John A. Jones Esq
Master Chy. Cb. Ills

" State of Illinois }
" Tazewell County } Be it remembered
" that on this 13th day of December, in
" the year of our Lord one thousand
" eight hundred and fifty five
" personally appeared John A. Jones
" (whose name is subscribed to the
" foregoing conveyance, before the
" undersigned Clerk of the County
" Court in and for said County and
" acknowledged that in his capacity
" of Master in Chancery of said
" County, he had executed said instru-
" ment for the purposes therein expressed
" Witness John Gridley, Clerk
" and the Seal of said County
" Court at Pekin the day
" and year last above written
" Seal
" John Gridley Clerk

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It is admitted that defendant
Pettysman took possession of
the premises described in the
Declaration, immediately after
the date of the deed from Jones to
him, and has continued in
possession of the same up to the
present time.

Plaintiff then offered
in evidence a certified copy of
the record of the District Court of
the United States for the District
of Illinois in the words and
figures following, to wit:—

{ District Court United
States, District of Illinois

October 3rd A. D. 1842

Present Hon Nathaniel Pope Judge

The following named individual
having proceeded in his application
for Bankruptcy according to law and
the rules and orders of this Court is
this day duly declared Bankrupt,
and the following named assignee,
and day of final hearing were

38 " appointed in said case, viz: -

919 James B. Campbell of Jo Davies
" County. Wm. B. Postwick assignee
" Day of final hearing February 1, 1842
" all of which decree, and of the
" appointment of assignee and of
" the day of final hearing are in
" form and correctly entered in
" the Decretal Book of this Court.

" Nathaniel Pope
" February 8th 1843. -

" Present the Hon Nathaniel Pope Judge

919 In the matter of
" James B. Campbell
" a Declared Bankrupt

~~~~~

A. It appearing  
" to the Court from the petition of  
" James B. Campbell a Bankrupt,  
" and the report accompanying the  
" same, that the said Bankrupt has  
" bona fide surrendered all his  
" property and rights of property  
" for the benefit of his creditors, and  
" that he has fully complied with and  
" obeyed all the orders and directions  
" which have been from time to time



39  
passed by this Court, and has  
otherwise conformed to all the requ-  
isites of the act entitled "an act to  
establish a uniform system of  
Bankruptcy throughout the  
United States, approved August 19,  
1841; and no written dissent to his  
discharge having been filed by a  
majority in number and value of  
his creditors, who have proved their  
debts; and no cause being now shown  
the Court, why the prayer of the petition  
should not be granted, it is therefore  
by virtue of the act aforesaid, ordered  
and decreed by the Court, that the  
said James B. Campbell be and he  
accordingly hereby is forever disch-  
arged of and from all his debts owing  
by him at the time of the presentation  
of his petition to be declared a  
Bankrupt, and it is further ordered that the  
Clerk duly certify this decree <sup>for the use of said Bankrupt</sup>  
Nathaniel Pope

Northern District of Illinois S.C.  
J. William H. Bradley Clerk  
of the District Court of the United  
States for said Northern District  
do hereby certify the foregoing  
transcript to be a true and correct



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" copy from the Record of the appointment  
 " of an assignee Oct 3<sup>rd</sup> A.D. 1842, and of  
 " the Decree entered therein Feb 8<sup>th</sup> 1843,  
 " all in the matter of James B. Campbell  
 " a Declared Bankrupt

Seal

In testimony whereof I  
 have herewith subscribed  
 my name and affixed  
 the seal of said Court  
 at my office in Chicago  
 in said Northern District  
 of Illinois this nineteenth  
 day of October in the year  
 of our Lord One thousand  
 eight hundred and fifty  
 eight and of our Independence  
 the eighty third

W. H. Bradley Clerk

Plaintiff then read in evidence  
 without objection the 5<sup>th</sup> rule of  
 the said District Court which was  
 in words and figures following, to wit:

" It shall be the duty of the assignee of  
 " the Bankrupt to make sale of all the  
 " right title and interest of the Bankrupt  
 " whether equitable or legal in and to



any real estate wheresoever situated  
with all due diligence having due regard  
to the interest of the creditors (unless  
some one of said creditors shall previous  
to the time appointed for such sale  
file with the assignee his written  
dissent thereto when it shall be  
the duty of such assignee to refer  
the matter to the court) And that  
the sale of said real estate, or any  
interest therein be made either  
for cash, or upon <sup>a</sup> credit not  
exceeding one and one half years,  
as the assignee shall deem most  
advisable and upon the premises  
to be sold, or at some public sale  
as said assignee shall deem best  
for the interest of said estate at  
least twenty days notice of the time  
place and terms of sale being first  
given by affixing up at least three  
notices and also by publication  
in some newspaper nearest the  
premises, when in the opinion of  
the assignee the property is sufficiently  
valuable to justify the expense of  
such publication

which was read in testimony without objection



Plaintiff then offered in evidence  
a deed by William C. Postwick  
as assignee of James B. Campbell  
to Plaintiff in words and figures  
following, to wit:

|                                 |                                                |
|---------------------------------|------------------------------------------------|
| " Wm C. Postwick, assignee      | } No 10088<br>Recorded<br>October 28th<br>1850 |
| " in Bankruptcy of J B Campbell |                                                |
| " To                            |                                                |
| " E. S. Halbrook                |                                                |

Whereas,  
by a decree of the Honorable, the District  
Court of the United States of America  
for the District of Illinois, sitting as  
a Court of Bankruptcy, James B.  
Campbell of the County of Davis  
in said District, was decreed a  
Bankrupt, which said decree bears  
date the third day of October A.D.  
1842, and is in the words and figures  
following, to wit:

District Court of the United States  
No 919 For the District of Illinois  
October 3<sup>d</sup> 1842

In the matter of the petition  
of James B. Campbell, to be declared  
a bankrupt and to be discharged  
from his debts



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On hearing the petition of the said  
James B. Campbell filed in this  
Court on the twenty second day of  
August AD 1842, praying to be  
declared a bankrupt in pursuance  
of the act of Congress, entitled "An  
act to establish a uniform system  
of Bankruptcy, throughout the  
"United States" and it appearing  
satisfactorily to the Court, that  
notice has been published, in  
pursuance of the previous order  
of this Court, and no sufficient cause  
being shown to the contrary, It  
is therefore ordered adjudged  
and decreed that the said James  
B. Campbell be deemed a Bank-  
rupt, within the purview of said act  
And it is further ordered and  
adjudged, that William C. Portwick  
of the County of Jo Daviess, be, and  
herby is appointed assignee of  
said Bankrupt, upon his entering  
into, before a Commissioner, and  
filing with the Clerk of this Court,  
a bond, in the penal sum of  
dollars, with two or more sureties  
to be approved by the Commissioner  
of the County, where the Bankrupt



resides, conditioned for the due  
and faithful discharge of all  
his duties, as such assignee, and  
his compliance with the orders  
and directions of the Court,"

And whereas, I, the said William C.  
Postwick, appointed assignee of  
the said James B. Campbell a  
bankrupt in and by virtue of the  
decree aforesaid, have complied  
with the provisions of said decree  
and have filed with the Clerk of  
said Court, my sufficient bond  
in the penal sum of five hundred  
dollars, with the sufficient  
securities, approved by the proper  
Commissioners, and have complied  
with all other, the regulations and  
directions of said decree, and with  
all the rules in bankruptcy of said  
Honorable Court, so far as the same  
apply to, or are binding and incumbent  
upon me, and have as such assignee  
sold the property hereinafter descri-  
bed, at public auction at the Court  
House, in said County of Jo Daviess  
having first duly advertised  
the same, according to law, and  
the said pieces and parcels of land



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and lots, having been offered and  
 sold separately, and having been  
 sold and struck at the prices  
 following, and said property  
 lands and lots being described  
 and designated, as follows, to wit:

B.

The undivided five (5) acres, in the  
 East half of the North east quarter of  
 Section No Sixteen (16) in township No  
 thirty three (33) North, of Range No. One  
 (1) east of the 3<sup>d</sup> principal meridian  
 in LaSalle County State of Illinois,  
 also the West half of the North East  
 quarter of Section No thirty five  
 (35) in township No twenty five (25)  
 North of Range No five (5) West of  
 the 3<sup>d</sup> principal meridian, in  
 Tazewell County in said State of  
 Illinois - also the following town  
 lots in Campbell Durley and Newhalls  
 addition, (sometimes called Campbell  
 and Newhalls addition) to the town  
 of Pekin, as laid out upon the East  
 half of the South west quarter of Section  
 No thirty five (35) in township No  
 twenty five (25) North of Range No five  
 (5) West of the 3<sup>d</sup> principal meridian  
 in said Tazewell County, platted  
 and recorded in the Recorder's office



of said Tazewell County, to wit:  
 Lots No one (1) two (2) three (3) four (4)  
 five (5) and six (6) in block No one (1) Lots  
 No one (1) two (2) three (3) four (4) five (5)  
 six (6) and seven (7) in block No two (2)  
 Lots No one (1) two (2) three (3) four (4)  
 five (5) and six (6) in block No three (3).  
 Lots No one (1) two (2) three (3) four (4) five  
 (5) six (6) seven (7) eight (8) nine (9) ten (10)  
 eleven (11) and twelve (12) in Block No  
 four (4) Lots No one (1) two (2) three (3) four (4)  
 five (5) six (6) seven (7) eight (8) nine (9)  
 ten (10) eleven (11) twelve (12) thirteen (13)  
 and fourteen (14) in Block No five (5).  
 Lots No one (1) two (2) three (3) four (4) five  
 (5) six (6) seven (7) eight (8) nine (9) ten  
 (10) eleven (11) and twelve (12) in Block No  
 six (6). Lots No one (1) two (2) three (3) four  
 (4) five (5) six (6) seven (7) eight (8) nine  
 (9) ten (10) eleven (11) and twelve (12) in Block  
 No seven (7) Lots No one (1) two (2) three (3)  
 four (4) five (5) six (6) seven (7) eight (8) nine  
 (9) ten (10) eleven (11) twelve (12) thirteen  
 (13) and fourteen (14) in Block No eight.  
 Lots No one (1) two (2) three (3) four (4) five  
 (5) six (6) seven (7) eight (8) nine (9) ten (10)  
 eleven (11) and twelve (12) in Block No  
 nine (9) Lots No one (1) two (2) three (3) four  
 (4) five (5) six (6) seven (7) eight (8) nine (9)



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" ten (10) eleven (11) and twelve (12) in Block  
 " No ten (10) Lots No one (1) two (2) three (3)  
 " four (4) five (5) six (6) seven (7) eight  
 " (8) nine (9) ten (10) eleven (11) twelve (12)  
 " thirteen (13) and fourteen (14) in Block No  
 " eleven (11). Lots No one (1) two (2) three (3)  
 " four (4) five (5) six (6) seven (7) eight (8)  
 " nine (9) ten (10) eleven (11) and twelve (12)  
 " in Block No twelve (12) Lots No one (1)  
 " two (2) three (3) four (4) five (5) six (6)  
 " seven (7) eight (8) nine (9) ten (10) eleven  
 " (11) and twelve (12) in Block No thirteen  
 " (13) Lots No one (1) two (2) three (3) four (4) five  
 " (5) six (6) seven (7) eight (8) nine (9) ten  
 " (10) eleven (11) twelve (12) thirteen (13)  
 " and fourteen (14) in Block No fourteen  
 " (14) Lots No one (1) two (2) three (3) four (4) five  
 " (5) six (6) seven (7) eight (8) nine (9) ten  
 " (10) eleven (11) and twelve (12) in Block  
 " No fifteen (15) Lots No one (1) two (2) three  
 " (3) four (4) five (5) six (6) seven (7) eight (8)  
 " nine (9) ten (10) eleven (11) and twelve (12)  
 " in Block No Sixteen (16) lots No one (1)  
 " two (2) three (3) four (4) five (5) six (6)  
 " seven (7) eight (8) nine (9) ten (10) eleven  
 " (11) twelve (12) thirteen (13) & fourteen (14)  
 " in Block No Seventeen (17) - Lots No one  
 " (1) two (2) three (3) four (4) five (5) six (6)  
 " seven (7) eight (8) nine (9) ten (10) eleven (11)



„ and twelve (12) in Block No Eighteen  
 „ (18). Lots No one (1) two (2) three (3) four  
 „ (4) five (5) six (6) seven (7) eight (8) nine  
 „ (9) ten (10) eleven (11) and twelve (12) in  
 „ Block No Nineteen (19). Lot No One  
 „ (1) two (2) three (3) four (4) five (5) six  
 „ (6) seven (7) eight (8) nine (9) ten (10)  
 „ eleven (11) twelve (12) thirteen (13) and  
 „ fourteen (14) in Block No Twenty (20)  
 „ Lots No one (1) two (2) three (3) four (4)  
 „ five (5) six (6) seven (7) eight (8) nine (9)  
 „ ten (10) eleven (11) and twelve (12) in Block  
 „ No twenty two (22). Lots No one (1) two (2)  
 „ three (3) four (4) five (5) six (6) seven (7)  
 „ eight (8) nine (9) ten (10) eleven (11) and  
 „ twelve (12) in Block No twenty three (23)  
 „ Lots No one (1) two (2) three (3) four (4)  
 „ five (5) six (6) seven (7) eight (8) nine  
 „ (9) ten (10) eleven (11) and twelve (12) in  
 „ Block No twenty four (24) Lots No  
 „ one (1) two (2) three (3) four (4) five (5) six  
 „ (6) in Block No twenty seven (27). Lots  
 „ No one (1) two (2) three (3) four (4) five (5)  
 „ six (6) in Block No twenty eight (28)  
 „ and Edmund S. Kalbrook of  
 „ La Salle County in said State  
 „ of Illinois having bid at said  
 „ sale for the undivided five acres  
 „ aforesaid, in the east half of the



49 North east quarter of Section No 16,  
in township No 33 North of range  
No one east of 3<sup>d</sup> principal meridian  
in LaSalle County aforesaid,  
the sum of forty cents; for the said  
West half of North east quarter of  
Section No thirty five (35) township No  
twenty five (25) North of Range No  
five (5) West of 3<sup>d</sup> principal meridian  
in said Tazewell County, the  
sum of forty cents, and for each  
of said lots in Campbell Durley  
& Newhalls (sometimes called  
Campbell & Newhalls) addition to  
the Town of Pekin, as aforesaid, as  
said lots are above recited and  
described, as the same were severally  
put up for sale, the sum of ten  
cents; amounting in the aggregate  
to the sum of thirty dollars; and  
the said Edmund S. Halbrook  
being the highest and best bidder  
for each and every of said tracts  
of land and lots of ground, he  
became the purchaser thereof at  
said sale, and the same were severally  
and each, and every of them struck off  
to him.

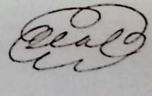
Now therefore; know all



50

"men by these presents, that I  
 "the said William C. Postwick as  
 "assignee of the said James B.  
 "Campbell, a bankrupt as aforesaid  
 "in consideration of the sum of  
 "Thirty dollars to me in hand paid  
 "by the said Edmund S. Halbrook  
 "the receipt whereof is hereby acknow-  
 "nowledged, do as such assignee, sell  
 "and convey unto the said Edmund  
 "S. Halbrook, and to his heirs and  
 "assigns, the said tracts of land and  
 "lots of ground, as the same are  
 "hereinbefore designated and  
 "described, To have and to hold  
 "the said tracts of land and lots  
 "of ground unto the said Edmund  
 "S. Halbrook his heirs and assigns  
 "forever.

"In witness whereof, I, the said  
 "William C. Postwick in my capacity  
 "of assignee of said James B. Campbell  
 "a bankrupt, as aforesaid, have  
 "hereunto set my hand and seal this  
 "18th day of October AD 1850.

"Wm C. Postwick assignee   
 "in Bankruptcy of James B. Campbell



57 State of Illinois }  
Jo Davies County }

Before me, the undersigned,  
Richard Seal Clerk of the County  
Court of said County, personally  
appeared this day William C. Portwick  
to me personally known to be the  
identical person described in, and  
who executed the foregoing deed  
and acknowledged to me that he  
had executed the same freely and  
voluntarily, for the uses and purposes  
therein mentioned—

Witness my signature and the  
seal of said Court this 18th day of  
October AD 1860

(Seal)  
Richard Seal

Richard Seal Clerk

to the reading of which defendants  
objected on the grounds.

1st. Because it does not contain and  
recite a copy of the decree of Bankrup-  
-tcy, and the order of appointment  
of the assignee as required by law.

2nd. Because it does not appear that  
there was any order of the Court  
requiring or authorizing the  
assignee to make the sale of the  
land described in the deed and



in the controversy or setting any time or place of such sale.

The Court decided that said deed could not be read in evidence on the ground that it did not appear that the sale was made under a decree of said Court directing a sale of said land and specifying the time and place of sale, to which decision Plaintiff then and there excepted.

This was all the testimony offered. The Court found the defendants not guilty.

Plaintiff then and there asked that this his bill of exceptions be signed and sealed which is done

James Harriatt Esq  
Judge of said Court

State of Illinois }  
Tazewell County } ss.

I, George H. Harlow  
Clerk of the Circuit Court within and for said County and State, do hereby certify that the foregoing 5 1/2 pages contains a full, true and complete copy of the record of proceedings had, and the papers on file in said cause, as fully as the same appears of record.



53

and on file my office -

Witness my hand and the  
Seal of said Court hereto  
affixed at Pekin in said  
County this 21st day of  
March A.D. 1861.

George H. Harlow Clerk  
per H. G. Garrison Deputy Clerk





In the Supreme Court of the  
State of Illinois, 3<sup>d</sup> Grand  
Division, April Term 1861  
Error to J. J. J. J.  
Amos & Holbrook Plaintiffs  
in Error

William Loring, and Berj.  
L. Prettyman, defendants in Error

And now comes the said plain-  
tiff in error by J. J. Roberts and  
Edmund W. attorneys, and  
says that record and proceed-  
ings, and in the rendering  
of the judgment aforesaid  
manifest error hath inter-  
vened in this

1<sup>st</sup> The court erred in not  
permitting the deed of Bost-  
wick to plaintiff to be read  
in evidence by plaintiff

2<sup>d</sup> The court erred in find-  
ing for the defendants.

3 The court erred in ~~giving~~  
rendering judgment for  
the defendants, & against  
said plaintiff



and Plaintiff prays that  
the judgment aforesaid  
for the errors aforesaid  
and for other errors appar-  
ent in said record, that  
said judgment be reversed

Roberts & Sel and  
for peth in error

Amund & Elbrook { In supreme court of the State of  
Wm Comy & B. P. Quinn } Mass: 3<sup>d</sup> - probate division  
April Term 1861

and the said defendants come and  
say that there is no such error in the above  
cause as the said Plaintiff hath above alleged  
and that they pray the judgment of the  
Court and that the said judgment below  
may be in all things affirmed &

Roberts & Sel  
Attorneys



37-127

C.S. Holbrook

vs

Am. Cony and

Record

Filed Apr 18. 1861

A. Deland  
Clerk

The \$150 paid by James  
Roberts Esq.  
L.H. Hudson Clerk