Indiana Law Journal

Volume 7 | Issue 8 Article 4

5-1932

Bankruptcy-Secured Debts-Jurisdiction of State Courts

RECENT CASE NOTES

BANKRUPTCY—SECURED DEBTS—JURISDICTION OF STATE COURTS—C was adjudged bankrupt in the District of Texas. Her estate included land in Arkansas. Isaacs was elected trustee. Thereafter plaintiff, the holder of a note secured by a mortgage on the land, brought foreclosure proceedings in the state court of Arkansas, making C and Isaacs defendants and reciting that plaintiff had not filed its secured note as a claim in the bankruptcy proceedings. The question certified to the Supreme Court by the Circuit Court of Appeals was: After the bankruptcy court has acquired jurisdiction of the bankrupt's estate and the referee has ordered sale, by the trustee, of all the bankrupt's property but before the trustee has taken any steps to sell land, part of such estate, entirely located in another judicial district, can a suit to foreclose a valid mortgage thereon be commenced and an order of sale thereunder be made over the objection of the trustee, by the court of the latter district? *Held*, the Supreme Court answered in the negative on the ground that the bankruptcy court had exclusive jurisdiction to deal with the property of the bankrupt estate.[1] This conclusion was based on the following propositions: 1. Upon adjudication, title to the bankrupt's property vests in the trustee with actual or constructive possession, and is placed in the custody of the bankruptcy court. 2. The title and right to possession of all property owned and possessed by the bankrupt rests in the trustee as of the date of filing of the petition in bankruptcy.[2]

The bankrupt's adjudication by operation of law vest title in the trustee.[3] The words of the act are, "The trustee * * * upon his appointment and qualification shall * * * be vested by operation of law with the title of the bankrupt as of the date he was adjudged a bankrupt."[4] It is quite clear that until there is a trustee there can be no vesting of title in a trustee.[5] The act states that the trustee shall be vested upon his appointment and qualification. The title vests in him in point of time at that moment but it vests as of the date of the adjudication. In other words, as Remington points out, "Title vests in the trustee for creditors, upon his appointment and qualification, but then relates back to the date of the bankrupt's adjudication."[6]

There is nothing in the act to warrant the proposition that the trustee's title relates back to the date of the filing of the petition. Before title passes to the trustee, as of the date of adjudication, it remains in the bankrupt, though of course there are restrictions on his right to dispose of the

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[1] *Isaac v. Hobb Tie & Lumber Co.*, 51 Sup. Ct. 270 (1931).

[2] For this latter proposition the court cites *Robertson v. Howard*, 229 U. S. 254, 259, 260, 33 S. Ct. 859, 57 L. Ed. 1174; *Wells & Co. v. Sharp* (C. C. A.), 208 F. 393; *Galbraith-Hilliard Grocery Co.* (C. C. A.), 216 Fed. 842.

[3] *Hiscock v. Varech Bank of New York*, 206 U. S. 28, 51 L. Ed. 945, 27 S. Ct. 681, 18 A. B. R. 9.

[4] Sec. 700.

[5] See *Rand v. Iowa C. Ry. Co.*, 186 N. Y. 158, 78 N. E. 574, 16 A. B. R. 697.

[6] 4 Remington, Bankruptcy (3 ed.) 6.

property. The bankrupt may, in some instances make a valid transfer of title at some time between the filing of the petition and the adjudication.[7]

Although the title vests in the trustee as of the date of adjudication, the "property which vests in the trustee is that which the bankrupt owned at the time of the filing of the petition."[8] Property acquired by the bankrupt after the filing of the petition is not, to use the language of the Act, property which "prior to the filing of the petition he could by any means have transferred." There is a distinction between the time of vesting of title in the trustee and what property vests at that time which seemingly was overlooked in the principal case.

S. K.

MUNICIPAL CORPORATIONS—NEGOTIABLE INSTRUMENTS—ESTOPPEL — An incorporated town purchased fire equipment from X company. This was unquestionably within its powers.[1] As payment for said apparatus, four promissory notes bearing interest at the rate of six per cent per annum were given by the town to X company. Said notes were transferred to the appellant in due course, for a valuable consideration, and before maturity. The appellant later sought to enforce collection of two of said notes alleged to be due and unpaid.

The appellee town demurred to the complaint on the ground that it did not appear therein that the state board of tax commissioners had approved the issuance and execution by the appellee of the notes sued upon. Appellee relied upon a statute providing among other things that: "All bonds or other evidences of indebtedness hereafter issued or sold by any municipal corporation of this state may bear interest not to exceed six per cent per annum provided that the state board of tax commissioners shall approve all such issues where rate of interest is in excess of five per cent."[2] The demurrer was sustained by the trial court and judgment was rendered for appellee thereon when appellant elected to stand upon its complaint. *Held*, judgment affirmed. Failure to obtain such approval renders the notes void.[3]

The case exhibits with exacting clarity the burdens upon one who accepts such evidence of indebtedness of a municipal corporation. The instrument shows on its face that it has been issued by a municipality. This alone charges the holder thereof with notice of statutory requirements that are prerequisite to a valid issue of the obligation.[4] To make his position secure, he must convince himself prior to accepting the instrument that all such requirements for a valid issuing thereof have been satisfied. It obviously follows in view of these facts that if action is brought on the note or bond, the complaint must allege that the instrument was issued in the manner prescribed by law, or said complaint is subject to demurrer.

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[7] *In re Perpall*, 271 F. 466, 46 A. B. R. 302; *Johnson v. Collier*, 222 U. S. 538, 56 L. Ed. 306, 32 Sup. Ct. 104, 27 A. B. R. 454; *Matter of Mertens*, 142 Fed. 445, 73 C. C. A. 561; *In re J. W. Lavery & Son*, 235 Fed. 910, 37 A. B. R. 606; *Gordon v. Mech. & Grodus Ins. Co.*, 45 So. 384, 22 A. B. R. 649.

[8] *Everett v. Hudson*, 228 U. S. 474, 57 L. Ed. 927.

[1] Burns' Ann. St. 1926, sec. 11277, subdiv. 3.

[2] Burns' Ann. St. 1926, sec. 14240, par. 2.

[3] *Citizens' Bank of Anderson v. Town of Burnettsville*, 179 N. E. 724, Appellate Court of Indiana, Feb. 18, 1932.

[4] *Oppenheimer v. Greencastle School Twp.* (1905), 164 Ind. 99, 72 N. E. 1100.