

Case No. 1,966.

In re BROOME.

[3 Ben. 488; ¹3 N. B. R. 343 (Quarto, 90).]

District Court, S. D. New York.

Nov. 15, 1869.

**BANKRUPTCY—FRAUDULENT TRANSFER—TRUST DEED—CLOUD ON
TITLE—SUIT BY ASSIGNEE-PETITION.**

A trust deed of lands in Florida, made by a bankrupt, who remained in possession of the lands till the filing of his petition in bankruptcy, will not be set aside by the bankruptcy court on petition of the assignee, unless such petition states that the lands were conveyed by the bankrupt in fraud of his creditors, under the laws of Florida, or facts showing that they were so conveyed, and, therefore, passed to the assignee under the 14th section of the bankruptcy act [Act March 2, 1867; 14 Stat. 522.]

In bankruptcy. In this case, the assignee in bankruptcy presented a petition to the court asking for the cancellation of a trust deed executed by the bankrupt [James E. Broome] of lands in Florida. [Dismissed.]

John McDonald, for petition.

Alexander & Green, in opposition.

BLATCHFORD, District Judge. The petition of the assignee in bankruptcy alleges only, that the trust deed which it sets forth was made, conveying the lands in Florida described in the deed; that it was duly delivered to the grantees and recorded by them; that the conditions on which the trust was to be carried out came into operation, but the trustees did not take possession of the lands or take any step to carry out the trust; that the bankrupt remained in possession of the lands until he filed his petition in bankruptcy; and that the assignee cannot make sale of the lands while the trust deed remains as a cloud on the title. The petition then prays that the trust deed may be set aside and delivered up by the trustees to be cancelled and removed from the records in Florida. There are no allegations to sustain the prayer for relief. The petition does not allege that the lands were conveyed by the bankrupt in fraud of his creditors, nor does it state any facts showing that they were so conveyed, so as to show that the lands passed to the assignee in bankruptcy, as being, within the 14th section of the act, properly “conveyed by the bankrupt in fraud of his creditors.” As the property was real estate situated in Florida, it

should have been alleged and proved that the conveyance was in fraud of creditors under the laws of Florida.

The petition is dismissed, with costs.

[NOTE. For decree setting aside an assignment of the bankrupt's lands in Florida, see following case, No. 1,967.]

¹ [Reported by Robert D. Benedict, Esq., and here reprinted by permission.]

This volume of American Law was transcribed for use on the Internet through a contribution from [Google](#). 