

Case No. 3,654.

DAVIS v. STITZER.

[7 Reporter, 484;¹19 N. B. R. 61; 36 Leg. Int. 176; 26 Pittsb. Leg. J. 115.]

Circuit Court, W. D. Pennsylvania.

Feb. 21, 1879.

BANKRUPTCY LIES—CONVERSION—LIMITATION.

Where an order of court is made directing the sale of realty discharged of liens, a conversion will be regarded as having been made at the time of the order, and therefore whatever was a lien on the realty on the day on which the order was made will be entitled to share in the proceeds of the realty whenever sold, and will not be barred from coming on the fund by the fact that between the order and the sale, the lien, as to realty, has expired by limitation.

Bill of review.

The question in this case was as to the validity of a lien for five thousand dollars on bankrupt's real estate. The facts in the case are as follows: Henry M. Stitzer was adjudicated a bankrupt on the 6th of April, 1876. A few weeks previous to his adjudication an execution was issued on a certain judgment, entered of record October 31, 1871, in favor of William Kightlinger, to amount of five thousand dollars, and levy made. The property of Stitzer was advertised for sale April 7, 1876, by the sheriff of Crawford county. Stitzer having been declared a bankrupt, an injunction was granted restraining the sheriff from selling the property. The assignee of the bankrupt then sold the property November 1, 1876, and in the distribution of the funds Kightlinger was not allowed to participate, on the ground that at the time of (or day before) the sale of the property of bankrupt the lien had expired by limitation, and the property was sold divested of it, and steps should have been taken for revival of judgment before assignee's sale. The matter was argued before the district court, and the decision rendered that the Kightlinger judgment could not participate in the distribution of the proceeds of the sale. [The case was taken to the circuit court on a bill of review, and there decided that the judgment of Kightlinger was a lien.²]

Thos. M. McFarland, for complainant.

Geo. A. Davenport, for respondent

MCKENNAN, Circuit Judge. In this case the judgment which was excluded from the distribution of the bankrupt's estate, was a lien upon the bankrupt's real estate at the date of the filing of the petition in bankruptcy. An order was made by the court restraining the judgment creditor from proceeding in any manner upon his judgment which is unrevoked. On the 5th of September, 1876, when the judgment was an unquestionable lien upon the bankrupt's real estate, the court ordered the sale of this real estate by the assignee discharged of liens. This was in effect a conversion of the real estate into money, a substitution of the fund for the land, as the only security to which the lien creditors could look for the payment of their debts. And, under all these circumstances, I am of opinion

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that in contemplation of law and to effectuate justice, the conversion of the land, and the substitution of the fund arising from its sale, are to be taken as having been effected when this order was made, and that the rights of the claimants to the fund are to be determined with reference to the circumstances existing at the date of such order. At that time the judgment of Kightlinger was a lien upon the bankrupt's real estate, and retained its priority upon the substituted security, and ought to have been allowed its proper portion of the fund for distribution. The order of the district court is, therefore, reversed, and the matter is remanded to that court, with directions to make distribution of the proceeds of the sale of the bankrupt's real estate upon the basis of the rights of the lien creditors to participate therein as of the date of September 5, 1876, when the order of sale was made.

¹ [Reprinted from 7 Reporter, 484, by permission.]

² [From 36 Leg. Int 176.]