

Case No. 5,912.

{19 N. B. R. 330.}<sup>1</sup>

IN RE HALE.

District Court, D. Vermont.

April 5, 1879.

BANKRUPTCY—FOLLOWING PROPERTY—SALE OF REAL ESTATE OF BANKRUPTS.

1. The court does not follow the property of the estates of bankrupts into the hands of purchasers, but only to their hands. After they have once had the property, they must take care of it and of the possession of it.
2. The bankrupt occupied the premises in question until conveyance thereof was made by the assignee to the purchaser. After the purchaser had perfected title, he had an interview with the bankrupt, in which it was agreed that the latter should vacate on a subsequent specified day. This he did not do. On petition by the assignee for delivery of possession to the purchaser, held, that the bankrupt was holding as a tenant under the purchaser, and not under the assignee; that the assignee had no further interest there, and was not further bound to maintain the purchaser's possession for him, nor to keep possession ready for him.

{This was a proceeding in bankruptcy in the matter of Charles F. Hale.}

WHEELER, District Judge. The petition of the assignee for delivery of possession of the real estate to the purchaser has been referred to the register, and heard upon his report. The facts reported show no ground for any action of this court. Regularly, possession of the estate, real and personal, should have been taken by the marshal by virtue of the warrant issued upon the adjudication of bankruptcy, and passed to the assignee upon the assignment of the estate to him, and to the purchaser from the assignee upon the conveyance from the assignee to him. Whether possession was taken of any part of this farm by the marshal or by the assignee does not appear; nor does it appear why possession of the part the bankrupt continues to occupy, whether the whole or a part, was not taken. It merely is shown that the bankrupt continued to

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occupy until the conveyance from the assignee to the purchaser, in some way, with the consent of, or without apparent objection by, the assignee.

If, then, whatever the terms of his occupancy were, he had refused to deliver up possession or to vacate the premises, unquestionably under the provisions of section 5104, Rev. St U. S., this court could require the delivery up or vacation by order and punish as for a contempt on any failure to comply. Probably it was in that view that the assignee commenced this proceeding. But the report shows that after the purchaser had perfected his title, in an interview between him and the bankrupt, it was agreed that the bankrupt should vacate the premises by the 15th day of March then next, now just passed. This directly implies that it was agreed that the bankrupt might occupy till that time. The agreement to vacate would necessarily include an agreement for occupation until he should vacate. After that arrangement the bankrupt was occupying under the purchaser, and not under the assignee. The assignee had no further interest there. He was not further bound to maintain the purchaser's possession, nor to keep possession ready for him. He undertook that the purchaser should have good title, but that would extend to the rightful, not the wrongful, claims of others. This possession of the bankrupt is wrongful, not rightful, since the time when he agreed with the purchaser to quit. This court does not follow the property of estates of bankrupts into the hands of purchasers, but only to the hands of purchasers. After they have once had the property, they must take care of it, and of the possession of it. This purchaser has had this property once, and the possession of it by having the bankrupt in possession of it under him. For aught that appears, and upon what does appear, the bankrupt was his tenant to March 15th, and since then has been holding over after the expiration of his tenancy. The laws of the state afford him the same remedies that are afforded other citizens in such cases, and which are ample, or as ample as the lawmaking power of the state has seen fit to provide for in such cases.

The petition is dismissed, but without prejudice.

<sup>1</sup> [Reprinted by permission.]