

Case No. 7,222. JARRELL V. HARRELL ET AL.
[1 Woods, 476; 7 N. B. R. 400.]¹

Circuit Court, S. D. Georgia.

April Term, 1871.²

BANKRUPTCY—FRAUDULENT CONVEYANCE IN CONTEMPLATION
OF—PURCHASE BY THIRD PARTY WITHOUT NOTICE—VALIDITY.

A person contemplating insolvency conveyed his property to another, in fraud of the bankrupt act [of 1867 (14 Stat. 517)], the grantee having notice of and participating in the fraud. After the appointment of an assignee in bankruptcy, the grantee conveyed the same property to a third person: *Held*, that if such third person were a bona fide purchaser, without notice of the fraud, his title was good as against the assignee.

[Cited in *Paddock v. Fish*, 10 Fed. 129; *Myers v. Hazzard*, 50 Fed. 162, 163.]

This bill was filed by [Elisha H. Beall] the assignee in bankruptcy of one [William L.] Jarrell, to have declared void certain sales and conveyances of the bankrupt's property alleged to have been made in fraud of the bankrupt act, and for the purpose of defrauding the creditors of the bankrupt, amongst others, a sheriff's deed to one Echols for a lot of 1,640 acres, known as the

“Snelling Place,” and a deed from the bankrupt to the said Echols for another lot of 680 acres, called the “Perry Place.” The sheriff’s sale took place October 1, 1867, and the conveyance of the Perry place October 7, 1867. The evidence clearly established the facts that the conveyances to Echols were fraudulent, and that Echols had knowledge of the insolvency of Jarrell and of his fraudulent purpose in making the conveyance. The defendant [David B.] Harrell purchased the property from Echols about a year after the conveyance to the latter, and after the complainant had been appointed assignee of the bankrupt. Harrell claimed that whatever might have been the character of the original sales, he was a bona fide purchaser, without notice of the fraud, and this claim of Harrell presented the only real question in the case.

R. E. Lyon, for plaintiff.

H. R. Jackson and Willis A. Hawkins, for defendant.

BRADLEY, Circuit Justice. It is contended on behalf of the complainant, that this plea cannot avail the defendant, however well sustained by proof; that the assignee, as soon as he was appointed, became entitled to the property, and no subsequent conveyance of it by Echols could give a title as against the assignee. I cannot yield to this suggestion. An assignee has no better right than any judgment creditor would have, to take the property out of the hands of a bona fide purchaser without notice. The real question is, was Harrell a bona fide purchaser without notice? The court then went into an elaborate examination of the evidence on this point, and reached the conclusion that the facts known to Harrell were sufficient to put him on notice of the fraudulent character of the title of Echols. A decree was therefore rendered for complainant.

[NOTE. An appeal was then taken by Harrell to the supreme court, where the decree was affirmed in an opinion by Mr. Justice Miller, who said the sale to Echols was a barefaced fraud, and, if Harrell did not know it when he purchased of Echols, it was because he intentionally shut his eyes to the truth. Mr. Justice Davis dissented. 17 Wall. (84 U. S.) 590.]

¹ [Reported by Hon. William B. Woods, Circuit Judge, and here reprinted by permission.]

² [Affirmed in 17 Wall. (84 U. S.) 590.]