

IN RE MOTT ET AL.

{N. Y. Times, Dec. 8, 1863.}

Circuit Court, S. D. New York. Nov. 28, 1863.

BANKRUPTCY—JURISDICTION OF DISTRICT
COURT—SETTING ASIDE CONVEYANCE BY
ASSIGNEE.

{Cited in Re Hyde, 6 Fed. 594, to the point that the district court in bankruptcy has the power to set aside by summary process a conveyance executed by the assignee in bankruptcy which was improvidently, irregularly, or without due authority, executed by the assignee, or which was procured to be executed by fraud upon the court or upon the assignee, while the property so conveyed is still in the hands of the party to whom so conveyed by the assignee.}

{This case is first reported as heard upon objections to petition of Jacob H. Mott to be decreed a bankrupt. Case No. 9,878b. It is next reported as heard in the district court upon application to set aside the sale by the assignee to Isaac C. Delaplaine of the bankrupts' interest in the estate of their grandfather John Hopper. The petitioners were allowed to move it into this court. Case No. 9,878a. It is now heard upon this removal.}

Judge Foote, for motion.

Mr. Betts, opposed.

NELSON, Circuit Justice. We have looked into the papers in this case, and are satisfied that the two orders entered by the district court, on the report of the general assignee, for a private sale of the assets of the bankrupts, on the 28th of February, 1860, were improvidently granted, and that they should be set aside, and, also, that the conveyance under them by the assignee to Isaac C. Delaplaine should be delivered up and canceled, and the monies paid by him, and deposited in the district court, be refunded to him, and those received by the assignee, and not so deposited, be refunded by the said assignee. We do

not doubt but that the district court has full power and jurisdiction to make an order to the above effect. As to the prayer of the petitioners that conveyances of the property made by the assignee to Delaplaine be made to them, we are of opinion that the district court has no power to make such an order, or that it would be right or proper to make it, even if it had the power. In the existing condition of the matter in controversy, a proper and equitable disposition of them, in our judgment, would be an order directing a sale of these assets at public auction, giving ample notice of the time and place of sale, with a particular description of the nature, locality and boundaries of the property, it being real estate; or, at least, as full and particular a description as practicable. As to the question of the two years' 902 limitation in the bankrupt statute, it has heretofore been adjourned to this court by the district court, and by this court held not to apply. Let the above be certified by the clerk to the district court.

{NOTE. Subsequently the administrators of Isaac C. Delaplaine petitioned to have the amount paid by him refunded to them. Case No. 9,879. At the public sale of this interest it was purchased by James M. Smith, Jr. A petition was filed to set aside this last sale. Petition dismissed. 6 Fed. 685.]

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