

IN RE MOTT ET AL.

{1 N. B. R. (1873) 223 (Quarto, 9).}¹

District Court, S. D. New York.

BANKRUPTCY—CONTRACT WITH
ASSIGNEE—APPLICATION TO HAVE AMOUNT
PAID REFUNDED.

Where the general assignee of the bankrupt made certain conveyances of the real estate, the administrators of the grantee made application to have the amount paid on the contract of sale refunded, which was denied for the reasons that the contract of sale was not delivered up to be cancelled, and further that there was a failure to show that the transaction with decedent was made in good faith by the general assignee.

{In the matter of Jacob H. Mott and Jordan Mott, bankrupts.}

G. B. Goldsmith, for petitioners.

BLATCHFORD, District Judge. When the questions in regard to the sales and transfers made to Isaac C. Delaplaine by the general assignee in bankruptcy in these cases were before the circuit court for this district in December, 1863, by adjournment from this court, Mr. Justice Nelson, in his opinion delivered in the matter, said that not only ought the orders of this court of the 28th of February, 1860, for the making of the sales in question, to be set aside, but the conveyances made under those orders by the general assignee to Delaplaine ought to be delivered up and cancelled, and the money paid by him and deposited in this court, amounting to \$800, ought to be refunded to him, and the money paid by him to the general assignee and not so deposited amounting to \$200, ought to be refunded to him by the general assignee, and that this court had power to make an order to that effect. [Case No. 9,878.] Judge Betts, in disposing of the matter in this court on the decision

by the circuit court of the questions adjourned into that court, delivered a written opinion in which, after deciding that the proceedings to obtain the orders of sales were irregular, and that the sales were void, and ought to be set aside, he said: "If the purchase made by Delaplaine from the general assignee was bonâ fide, and in the belief that the power exercised on the occasion was rightly and fairly used by the general assignee in his behalf, it is competent for the court, if necessary, to afford the said Delaplaine relief against the erroneous proceedings, by compelling the restoration to him of the consideration paid by him on such void sale." It appears from the papers on file in these matters that on the 29th of February, 1860, the general assignee made conveyances to Delaplaine in pursuance of the sales, the conveyances being of interests of the bankrupts in certain real estate, and received from Delaplaine as the purchase money, \$800, being \$400 in each case, which sum of \$800 was paid into this court, and is still in court, and also received from Delaplaine \$200 for his "legal professional services" in the matters, which latter sum he has retained. It also appears from an affidavit made by Delaplaine on the 14th of December, 1860, that after his purchase from the general assignee, he employed a person by the name of Irving to ascertain the market value of the purchased property; that Irving had no authority to offer it for sale, but that having been informed by Irving of an offer he had made of it, he, Delaplaine, expressed his regret, but declared that as the offer had been made he would confirm what Irving had done. It also appears from the files of the court that Irving on the 14th of June, 1860, made a written offer on behalf of Delaplaine to sell for \$20,000 what had been conveyed to Delaplaine by the general assignee.

An order was made by this court on the 17th of June, 1864, in pursuance of the decision of Judge

Betts, before referred to, decreeing that the sale to Delaplaine was void, and that the orders of sale be revoked and annulled, and that the general assignee proceed in the due course of the administration of the duties of his office, and dispose of the assets of the bankrupts in his hands, and distribute the same according to law. The order made no provision in regard to paying any money back to Delaplaine, probably for the reason that Delaplaine made no application to court for that purpose, and still adhered to his purchase, as evidenced by the fact that he did not offer to deliver up for the purpose of cancellation, the conveyances which had been made to him by the general assignee. Delaplaine having died in July, 1866, his administrators now apply to this court by petition, praying for the refunding to them of the \$1,000. But they do not offer to deliver up to be cancelled the conveyances made by the general assignee to Delaplaine; nor do they show that Delaplaine never assumed to dispose of what purported to be conveyed to him; nor do they show that Delaplaine never realized anything from a sale of the interests, or what disposition he made of them; nor do they show, in accordance with a view taken by Judge Betts in his opinion, that the purchase made by Delaplaine was bonâ fide, and in the belief that the power exercised on the occasion was rightly and fairly used by the general assignee in his behalf. The purchase for \$800, with a fee of \$200 to the general assignee, of what the purchaser less than four months afterwards held for sale at \$20,000, would seem pretty conclusively to repel the idea that there could have been any bona fides in the transaction on the part of Delaplaine, or any belief on his part that the 905 general assignee, in parting with the interests sold for \$800, was exercising in a right and fair manner the powers of his office, which required him to realize as much as possible for

the creditors of the bankrupts. The application, in the shape in which it is now made, is denied.

{NOTE Subsequently this same interest formerly purchased by Isaac C. Delaplaine was sold at public sale, and 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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