

## IN RE PARKER ET AL.

[6 Ben. 286.]<sup>1</sup>

District Court, E. D. New York.

Dec, 1872.

## BANKRUPTCY—PREFERRED DEBTS—TAXES.

Bankrupts occupied land under a lease, in which they covenant to pay the taxes on the land. They failed to pay them, and the lessors paid them: *Held*, that the lessors were not entitled to claim the amount of such payment, as a preferred debt, under the 28th section of the bankruptcy act [of 1867 (14 Stat. 530)].

[In the matter of Parker & Peck, bankrupts.]

BENEDICT, District Judge. I am of the opinion that the payment by the petitioners of taxes and assessments on their own land gives them no right to claim that amount out of the bankrupt's estate as a preferred debt under section 28 of the bankruptcy act, notwithstanding the fact that the bankrupts were the occupants of the land under a lease in which the lessee covenanted to pay a yearly rent, and "all such taxes, water rents and penalties as shall during said term grow due and payable out of said demised premises." The failure by the lessee to perform this covenant gave the lessors a right of action from the breach thereof, and nothing more. The prayer of the petitioners that their demand be declared entitled to be paid out of the estate of the lessee, in preference to the other creditors, must, therefore, be denied. Upon being properly proved, their demand is, however entitled to share with the other creditors of the lessee in the distribution of his estate.

<sup>1</sup> [Reported by Robert D. Benedict, Esq., and here reprinted by permission.]

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