

## THOMAS V. CRUTTENDEN.

{4 Cranch, C. C. 71.}<sup>1</sup>

Circuit Court, District of Columbia. May Term, 1830.

EJECTMENT—TITLE—BANKRUPTCY—COMMISSIONERS'  
DEED—EVIDENCE—RECORDS.

A person, claiming title under a deed from commissioners of bankrupt, under the bankrupt law of 1800 [2 Stat. 19], must show their authority, and that their proceedings were regular, &c., as they exercised only a special, limited power; but if the records are destroyed, the next best evidence will be received.

The plaintiff [James Thomas], having shown title in Washington Bowie, offered in evidence a deed from E. B. Caldwell, and purporting to be executed by them as commissioners of bankruptcy to Walter Smith and Charles Wayman, assignees of the bankrupt; and offered to prove by W. Brent, the clerk of this court, that the bankrupt papers and records, in cases where commissions were issued by a judge of this court, were destroyed by the enemy in 1814; and by W. Cranch, that he, as assistant judge of this court, issued a commission of bankruptcy against Washington Bowie. And the plaintiff further offered in evidence a deed from the assignees to Baltzer, under whom the plaintiff claims; and a decree in chancery ordering a sale of this, as part of the real estate of Baltzer, and possession of the purchase under that decree; and also produced a certificate of the clerk of this court, made in January, 1804, that this court, in December term, 1803, decreed that the deed from the commissioners to the assignees should be recorded; and further proved that all the records and papers of that term were destroyed by the enemy. Those deeds recited the proceedings under the bankrupt law of 1800.

Mr. Redin, for defendant [Joel Cruttenden], objected to the admission of the deed 937 from the commissioners to the assignees, because all the proceedings under the commission of bankruptcy must be proved; nothing can be presumed; it is a special tribunal of limited powers and jurisdiction, &c.

Mr. Marbury and Mr. Key, for plaintiff, admit that everything necessary to support the jurisdiction and authority of the commissioners must be proved; but the question is, by what sort of evidence? The records and original papers are all destroyed. The next best evidence is that which is now offered. The recitals in the old deeds, recorded in 1802, twenty-eight years ago; the destruction of the original papers and records; the certificate of the clerk, recorded in January, 1804, that a decree was passed by this court in December, 1803, authorizing the recording of the deed and the long possession under that deed,—are circumstances from which the jury may infer all the necessary proceedings under the bankrupt law.

THE COURT was of that opinion (nem. con.), and the jury rendered their verdict for the plaintiff.

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]

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