

Case No. 16,941.
[5 Law Rep. 17.]

IN RE VILA.

Circuit Court, D. Massachusetts.

March 19, 1842.

BANKRUPTCY—SALE OF ASSETS—AUTHORITY OF COURT—NOTICE TO CREDITORS—PROCEDURE.

1. The district court of the United States has authority to order the sale of the whole or any part of the property of a bankrupt, by his consent, even before the declaration of bankruptcy.
2. The creditors must have due notice of any application for a sale, so that they may appear and show cause against such sale, or for a postponement thereof.
3. Such sale, if directed by the court, should be made by a commissioner. The time and place of the sale should be fixed by the court, and duly advertised, and the conveyance should be made by the bankrupt to the purchaser in the form prescribed by the commissioner.

A petition was filed in the district court by James Vila, setting forth that on March 11th he filed in this court a petition to be declared a bankrupt; that at the time of his bankruptcy he was seized and possessed of certain real estate and personal property, which was specifically set forth; that it would be for the benefit of the said estate, and of all parties having interest therein, that the same should be sold, transferred and assigned, inasmuch as it would be necessary to expend large sums of money in order to preserve the same from deterioration and waste, and if the time of the sale was postponed until an assignee of said estate should be appointed, the same could not be sold except at great loss and disadvantage. Wherefore the petitioner prayed the court to pass an order for that purpose, according to the provisions of the act of congress. No opposition was made to the petition. At the hearing, the district judge made an order, that the question, whether upon the facts set forth in said petition, the said James Vila, or any other person, might be empowered to sell and convey the property mentioned in said petition, or any part thereof; and if so, in what manner the same should be done, be adjourned into the circuit court, to be there heard and determined. [Case unreported.]

Francis C. Loring, for petitioner.

STORY, Circuit Justice. I have no doubt whatsoever of the authority of the district court to order the sale of the whole, or any part of this property, in the present stage of the proceedings in bankruptcy, in its discretion, if it will, in the judgment of the court, be beneficial to the creditors, and is assented to by the bankrupt. The authority results from the general jurisdiction of the court as a court of equity sitting in bankruptcy; and it becomes the duty of the court, from the moment that the property is submitted to its custody, under the proceedings in bankruptcy, to take due order for its preservation, and to turn it to the best account for the creditors. No one could well doubt this, if the property were perishable; and quite as much injury might result, if it were, in the interval, subject to great depreciation from other causes. I say, that the sale may be made with the consent

In re VILA.

of the bankrupt; for, as he has not as yet been decreed to be a bankrupt, it would seem unfit to exercise the authority without such consent, until the property is divested from him under the decree declaring him a bankrupt. It is necessary, however, that the creditors should have due notice of this application, before the sale takes place, so that they may appear and show cause in the district court against any sales or for a postponement thereof; and doubtless the best mode of giving notice to the creditors would be by advertisement in some public newspapers, a sufficient time before the sale to enable them to act, if they see fit, on the premises.

The sale, if directed by the court, should, as I think, be made by a commissioner appointed by the court, and not by the bankrupt. The commissioner would naturally seek the aid and service of the bankrupt and of the creditors to assist his own judgment, not indeed as a matter of strict duty, but of convenience and propriety. The time and place of sale should be fixed by the court and duly advertised; and the conveyance should be made by the bankrupt to the purchaser or purchasers, in the form prescribed by the commissioner, and with his sanction and approbation as a party thereto, with the proper recitals. I shall direct an order to be sent accordingly to the district court, certifying this opinion.

The following order was accordingly sent; Circuit Court of the United States, Massachusetts District. In Bankruptcy. March 19, 1842. In the Matter of James Vila, Petitioner. Upon the question certified and ordered to be adjourned into this court by the district court, to be heard and determined, it is hereby ordered and decreed to be certified to the district court, as follows: That it is competent for the district court, sitting as a court of equity in bankruptcy, to authorize and decree a sale to be made of the property mentioned in the said petition, or any part thereof, as the district court may, in its discretion, deem for the interest of the estate. The sale is to be made at public auction, at such time and place as the said court may direct, by a commissioner to be appointed by the court for that purpose. That the creditors, who have proved their debts, and all other creditors, who shall prove their debts, are to have notice, by a publication in some newspaper or newspapers designated by the court, of the time and place of such intended sale, that they may appear and show cause, why the sale should not be made, and apply to the court for a stay or suspension thereof. That the deed to be executed to the purchaser shall

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be executed by the said Vila in due form of law, and shall be in such terms and with such covenants as the commissioner shall advise and direct; and that the commissioner shall also be a party to the said deed and execute the same, and that the same shall contain a recital, that the sale has been made by him, under the authority of the court, and has been approved by him, and that the proceedings under the sale have been in all respects conformable to the decretal order of the court.