

ent, and his possession under it, for the reasons stated on all the points discussed in the opinion. The view taken upon the points discussed renders it unnecessary to consider the evidence as to whether the land in dispute is in fact mineral land, or, if it is, whether its mineral character was, in fact, known at the date of the patent.

Let a decree be entered for complainant for a perpetual injunction, in pursuance of the prayer of the bill, with costs.

TAYLOR and others v. ROBERTSON and others.

(Circuit Court, N. D. Illinois. April 14, 1884.)

1. BANKRUPTCY—ESTATE OF ASSIGNEE IS THAT WHICH BANKRUPT HELD WHEN PETITION WAS FILED.

It was the purpose of congress, as evidenced by sections 5044, 5046, Rev. St., tit. "Bankruptcy," to clothe the assignee of the bankrupt with the latter's estate whenever such assignee should be appointed and a deed made to him in the same condition and plight as such estate was in when the petition in bankruptcy was filed.

2. SAME—SALE MADE BETWEEN FILING OF PETITION AND ADJUDICATION OF BANKRUPTCY—RIGHTS OF ASSIGNEE.

A sale made between the date of the adjudication of bankruptcy and the appointment of the assignee is at least voidable as against the assignee or those claiming under him.

Creditor's Bill.

McCoy, Pope & McCoy, for complainants.

Paddock & Aldis, for defendants.

BLODGETT, J. The questions in this cause arise upon the pleadings and proofs in a creditor's bill and several amended and supplemental bills filed thereafter. On the thirtieth of July, 1877, complainants Taylor and Bruce recovered, on the law side of this court, a judgment against William Scott Robertson for the sum of \$21,786 and costs. On this judgment execution was duly issued to the marshal of this district, and returned "no property found," January 24, 1878; a creditor's bill in the usual form was filed by complainants, to which Francis B. Peabody, Benjamin E. Gallup, and others were made defendants, with the allegation "that they, or some one or other of them, have in their possession or control personal property, and hold title to real estate which belongs to said defendant Robertson, or in which he is some way beneficially interested." Due service of process was had on the defendants in this bill before the return-day thereof, and the defendant Peabody demurred to the bill for want of equity, and in March, 1878, his demurrer was sustained. No answer seems to have been filed by the other defendants, and no proceedings taken, until September 17, 1881, when an amended and supplemental bill was filed, and since then other amendments and

supplemental bills have been filed, making Mehitable Green, widow of David R. Green, deceased, William W. Crapo, and Charles W. Clifford, trustees of the heirs of said David R. Green, and said Robert B. Green, Susan G. Page, Horatio N. Green, and Francis B. Green, heirs of said David R. Green, and E. A. Cummings, defendants; and these defendants have duly answered. The controversy, which has finally been brought to a hearing upon these amended and supplemental bills and answers, has reference to the validity of a sale under a trust deed, made by the defendant Peabody, and concerns only the property covered by this trust deed,—all the other matters in the original and amended bills having been abandoned by complainants.

The facts appearing in these pleadings and proofs, which seem to me necessary to consider for the purpose of disposing of the case, are: That on or about April 1, 1871, one Nathan S. Grow, of the city of Chicago, borrowed of David R. Green, now deceased, then of New Bedford, Massachusetts, \$35,000, payable in five years from said date, with interest at 8 per cent. per annum, payable semi-annually, and to secure the payment thereof executed to the defendant Benjamin E. Gallup, as trustee, a trust deed conveying a valuable tract of land situated on the corner of West Madison and Sheldon streets, in this city, and described in the pleadings and proofs as the "Jefferson Park Hotel property." Some time in 1876 Grow sold and conveyed this property to the defendant Robertson, and Robertson assumed and agreed to pay this Green incumbrance. On the second day of April, 1877, Robertson, having negotiated with Robert R. Green for an extension or renewal of the Grow indebtedness for the further term of three years, executed and delivered to the defendant Peabody a trust deed of the same property, securing the payment of the said sum of \$35,000 in three years, and interest thereon at the rate of 7½ per cent., payable semi-annually, with full power to the trustee to sell the property so conveyed, in case of default in payment of the indebtedness so secured, after advertising the same in the manner provided by the trust deed, and out of the proceeds to pay the indebtedness so secured, and the costs of such sale, together with any money advanced for payment of taxes, assessments, or insurance. The trust deed also contained a clause that in case of default in the payment of interest, when the same should fall due, and for 30 days thereafter, or in case the premises, or any part thereof, should be sold for taxes or assessments thereon, the whole indebtedness should, at the election of the holder thereof, become immediately due and payable, and the trustee might be required to sell in the same manner as though the whole principal had become due and remained unpaid by lapse of time. It also appears that on the thirtieth day of August, 1878, Robertson, being in default in payment of the interest which had accrued in the preceding October and April, at the urgent request and direction of said David R. Green, then the holder of said indebtedness, delivered to Mr. Peabody, the trustee, the possession of