

## Humphries v. Blight.

cant for the warrant is directed, by the 3d section, to lodge in the land-office at the time he applies for the warrant. It is merely a demarcation, a special location of the land intended to be appropriated, and gives notice of the bounds thereof, that others may be able to make adjoining locations, without danger of interference: that is not such a survey as is returnable, so as to lay the foundation of a patent. 2d. It is not authorized by a warrant 3d. It was not for an actual settler. 4th. It was not made by an authorized surveyor, if you believe, upon the evidence, that the authority to Steel was ante-dated, and given after the survey was returned. Not the warrants.

\*370] 1st. Because it was not a warrant of title, but of acceptance. \*2d. It is not founded on settlement, but improvement, and if it had recited the consideration to be actual settlement, the recital would have been false in fact, and could have produced no legal valid consequence.

As to the *caveat*; the effect of it was to close the doors of the land-office against the further progress of the plaintiff in perfecting his title. The dismissal of it, again opened the door, but still, the question as to title is open for examination in ejectment, if brought within six months, and the patent will issue to the successful party.

The plaintiff, therefore, having failed to show a title sufficient to enable him to recover in this action, it is unnecessary to say anything about the defendant's title; and your verdict ought to be for the defendant.

The jury found for the defendant.

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HUMPHRIES v. BLIGHT's assignees. (a)

*Bankruptcy.—Set-off.*

Where the holder of a negotiable note indorses it to a third person, after a commission of bankruptcy has issued against the payee, the indorsee may prove under the commission, but subject to all just off-sets, existing at the time of the bankruptcy.

THIS was an amicable action, to obtain a decision upon these general facts: Murgatroyd, being possessed of two notes, made by Peter Blight, payable without defalcation, and being indebted to Humphries, offered to give the notes in part payment, and cash for the rest of the debt. The notes had been due for some time; and a commission of bankruptcy had previously issued against Blight; but Blight, upon an application from Humphries, advised him to accept the proposition, without any intimation of a defence or set-off. The notes were, accordingly, indorsed by Murgatroyd to Humphries; but when presented by the indorsee, to be proved under the commission, the assignees of Blight claimed a right to set off a debt due from Murgatroyd to Blight; and for the trial of this claim the present action was instituted. Two questions, however, were discussed on the trial: 1st. Whether the holder of a promissory note, purchased after a commission of bankruptcy had issued against the maker, could prove the debt, under the commission? 2d. Whether the note, being purchased after it was due, had not lost its general negotiable character; and consequently, remained subject to any set-off, that would apply between the drawer and payee?

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(a) s. c. 1 W. C. C. 44.

United States v. Passmore.

*Hare* and *Dallas* argued for the plaintiff, and cited 5 vol. Acts Cong. p. 68, § 34; 5 Geo. II., c. 30, § 7, § 28; 5 vol. Acts Cong. p. 15, 74, § 1, § 42; 1 Atk. 73; 2 Wils. 135; Cull. 99; Evans 220; Co. B. L. 19; 1 Atk. 119; 4 Dall. Laws, 102-3; 3 T. R. 80, 7 Ibid. 429; 2 Dall. 396; 2 Fonbl. 150; Anstr. 427.

\**Rawle* argued for the defendants, and cited 4 T. R. 714; 6 Ibid. [\*371] 57; 2 Str. 1234; 3 T. R. 80, Co. 96; 5 vol. Acts Cong. p. 74, § 42.

BY THE COURT.—1st. We have no doubt upon the right of the assignee of the note, in this case, to prove the debt under the commission, and to receive a dividend. The certificate of the bankrupt would be a bar to a recovery, in an action by the present holder of the note against him; and wherever a certificate will be a bar, the right to prove the debt, under the commission, must be unquestionable.

2d. In the case of negotiable paper, or in the case of an assignable bond, we have always thought, that the assignee takes it discharged of all the equity (as between the original parties) of which he had no notice. But whenever the assignee has notice of such equity, either positively or constructively, he takes the assignment at his peril. The assignment, in this case, was taken after the commission of bankruptcy had issued; and the commission was legal notice, that wherever mutual debts subsisted between the bankrupt and his creditors, the right of set-off attached. The set-off claimed by the assignees must, therefore, be allowed: and this opinion is given, without admitting any distinction, whether the notes were due or not, before the assignment; but merely upon the ground that the assignment was subsequent to the commission.

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\*APRIL TERM, 1804.

[\*372]

Present—WASHINGTON, Justice, and PETERS, District Judge.

UNITED STATES v. THOMAS PASSMORE.<sup>1</sup>

*Perjury.—Repeal of statute.*

Perjury, under the bankrupt law of 1800, was not indictable, under the act of 30th April 1790, § 18; that section only applies to perjuries committed in judicial proceedings. An indictment cannot be sustained, under a statute which has been repealed, without any saving clause.<sup>2</sup>

THE defendant, who had become bankrupt, was prosecuted by indictment, containing two counts, for perjury, in swearing before the commissioners, on the 20th day of September 1803, that he “could not tell exactly the time, but believed it was the latter (end) of 1799, that he first owned

<sup>1</sup> s. c. 1 W. C. C. 84.

puts an end to a pending indictment under it;

<sup>2</sup> United States v. Finlay, 1 Abb. U. S. 364; S. c. 3 Pitts. 126; Ex parte Landsberg, 11 Int. R. Rec. 150; United States v. Bennett, 12 Bl. U. C. 345. And the repeal of a penal statute United States v. Tynen, 11 Wall. 88; Commonwealth v. Duane, 1 Binn. 601; Genkinger v. Commonwealth, 32 Penn. St. 99; Hartung v. People, 22 N. Y. 95.