

# Landlord and Tenant--Bankruptcy as Condition Subsequent or Conditional Limitation (Murray Realty Co. v. Regal Shoe Co., 265 N.Y. 332 (1934))

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To permit collateral attacks on judgments on grounds other than fraud in the procurement or want of jurisdiction<sup>20</sup> would leave a court without capacity to settle definitely any suit brought before it, and would render judgments insecure and uncertain. New evidence, confessions of perjurers, mistaken testimony, etc., if permitted to overthrow a judgment once competently made, would keep lawsuits alive *ad infinitum*.<sup>21</sup>

J. E. F.

LANDLORD AND TENANT—BANKRUPTCY AS CONDITION SUBSEQUENT OR CONDITIONAL LIMITATION.—Defendant, assignee of a lease, was adjudicated bankrupt. Said lease contained a clause "that an adjudication that the lessee is bankrupt shall *ipso facto* end and terminate this lease and any rights thereunder." It was further provided that the "lessor at its option may rescind and terminate this agreement upon \* \* \* the breach of any of its conditions, or any of the covenants or agreements of said lessee." This suit is brought for rents accruing between the adjudication of bankruptcy and the disaffirmance of the lease by the receiver. *Held*, the provision for a termination of the lease upon the adjudication of bankruptcy constituted a conditional limitation terminating the lease and all obligations thereunder upon its happening. *Murray Realty Co. v. Regal Shoe Co.*, 265 N. Y. 332, 193 N. E. 164 (1934).

Parties to a lease may create a conditional limitation by providing for the termination of the leasehold estate upon an adjudication of bankruptcy of the lessee.<sup>1</sup> To effect such result, it is requisite

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Roach v. Garvan, 1 Ves. Sen. 157; Harvey v. Farnie, 8 App. Cas. 43. In Cottington's Case, 2 Swanston 326 (1678), Lord Chancellor Nottingham in the House of Lords said: "It is against the law of nations not to give credit to the judgments and sentences of foreign countries, till they be reversed by the law, and according to the form, of those countries wherein they were given. For what right hath one kingdom to reverse the judgment of another? And how can we refuse to let a sentence take place till it be reversed? And what confusion would follow in Christendom, if they should serve us so abroad, and give no credit to our sentences." The New York cases are in accord. *Guggenheim v. Wahl*, 203 N. Y. 390, 96 N. E. 726 (1911).

<sup>20</sup> *Supra* note 4.

<sup>21</sup> Dickens, in *Bleak House*, writes of the case of "Jarndyce v. Jarndyce," which was litigated for four generations over a period of eighty years. Might not any case in the courts today equal, if not surpass, Dickens' case in longevity, in the event that the rule for attacking judgments collaterally were extended?

<sup>1</sup> *Jane v. Paddell*, 67 Misc. 420, 122 N. Y. Supp. 760 (1910); *Lichtenstein v. Groton Laundry Service*, 123 Misc. 942, 206 N. Y. Supp. 579 (1924); *In re Outfitters' Operating Realty Co.*, 69 F. (2d) 90 (C. C. A. 2d, 1934).

that the adjudication of bankruptcy be *the* act that ends the estate.<sup>2</sup> Even the implication that some further act is necessary to bring the term to a close will prevent the clause from being construed as a conditional limitation.<sup>3</sup> When the fact itself<sup>4</sup> will suffice to terminate the grant, the mere filing of a petition in bankruptcy will terminate the lease.<sup>5</sup> It is equally competent for the parties to create a condition subsequent by giving the lessor the option to terminate the estate upon the bankruptcy of the tenant.<sup>6</sup> When such a situation exists, it is the exercise of the option by the landlord that brings about the ending of the term and not the adjudication.<sup>7</sup> The distinction between the two types of conditions is very obvious. It lies in the necessity for the declaration of an end of the relation in a condition subsequent while no such necessity exists in the conditional limitation.<sup>8</sup>

In an agreement of this kind the language<sup>9</sup> employed should be strictly construed<sup>10</sup> so as to give effect to the intention of the parties.<sup>11</sup>

M. E. W.

LIMITATIONS OF ACTIONS—BANKS AND BANKING.—Plaintiff seeks to recover the amount of several checks which had been paid out by defendant on forged indorsements. The checks were issued by plaintiff as pension money over a period of eighteen months, dur-

<sup>2</sup> *Miller v. Levi*, 44 N. Y. 489 (1871); *Matter of Szpakowski*, 166 App. Div. 578, 151 N. Y. Supp. 211 (4th Dept. 1915); *Ashton Holding Co., Inc. v. Levitt*, 191 App. Div. 91, 180 N. Y. Supp. 700 (1st Dept. 1920); *507 Madison Avenue v. Martin*, 200 App. Div. 146, 192 N. Y. Supp. 762 (1st Dept. 1922); *Lonas v. Silver*, 201 App. Div. 383, 195 N. Y. Supp. 214 (2d Dept. 1922).

<sup>3</sup> *Schneider v. Springman*, 25 F. (2d) 255 (C. C. A. 6th, 1928).

<sup>4</sup> *Supra* note 2.

<sup>5</sup> *In re Outfitters' Operating Realty Co.*, *supra* note 1, the court stated "that \* \* \* mere filing of petition in bankruptcy puts an end to lease, not at lessor's option, but unconditionally."

<sup>6</sup> *In re Roth v. Appel*, 181 Fed. 667 (C. C. A. 2d, 1910); *Beach v. Nixon*, 9 N. Y. 35 (1853); *Woodworth v. Harding*, 75 App. Div. 54, 77 N. Y. Supp. 969 (4th Dept. 1902); *Witthaus v. Zimmerman*, 91 App. Div. 202, 86 N. Y. Supp. 315 (1st Dept. 1904); *Broadex Realty Corp. v. Jones*, 211 App. Div. 96, 206 N. Y. Supp. 602 (1st Dept. 1924).

<sup>7</sup> *Ibid.*

<sup>8</sup> *Supra* note 2.

<sup>9</sup> *Jane v. Paddell*, *supra* note 1; 1 TIFFANY, LANDLORD AND TENANT §36 at 289.

<sup>10</sup> *Gillette Bros. v. Aristocrat Restaurant*, 239 N. Y. 87, 145 N. E. 748 (1924); *In re Schneider v. Springman*, *supra* note 3, a provision that the lease was to be *forfeited* upon lessee's bankruptcy was held not equivalent to a provision that lease should be "terminated" since the words "terminated" and "forfeited" were not synonymous and that "forfeited" implied election.

<sup>11</sup> *Raymond v. Hodgson*, 55 Ill. App. 423; *Anzalone v. Paskuz*, 96 App. Div. 188, 89 N. Y. Supp. 203 (1st Dept. 1904); *City of New York v. United States Trust Co.*, 116 App. Div. 349, 101 N. Y. Supp. 574 (1st Dept. 1906).