IN RE AMBLER.

Case No. 271.
{8 Ben. 176.}[1]

District Court, S. D. New York. June, 1875.

PREFERENCE—TAXES—DEBT DUE TO A STATE.

A debt due from a bankrupt to a state other than the state in which the bankruptcy proceedings are pending, for taxes, is not entitled to a preference under the fifth subdivision of section 5101, Rev. St.

In bankruptcy. The register in this case certified to the court that, at a third general meeting of the creditors {of Andrew F. Ambler} herein, a deposition for proof of debt was presented in behalf of the state of Texas, amounting to $700.59, for taxes levied and assessed against the firm of Ambler & Mason, in accordance with the laws of the state of Texas; and that it was demanded that. in the order for a dividend, this claim should be admitted to a preference and be first paid in full, as a claim entitled to such preference under the fifth subdivision of section 5101, Rev. St. And the register certified the question to the court, with the following opinion:

"It is on the strength of the judgment of the court in U. S. v. Herron, {20 Wall. (87 U. S.) 251,} that it is contended that this claim is entitled to priority. The question in that case was, whether a debt due to the United States from the bankrupt on a bond executed by the bankrupt, as surety for a defaulting revenue officer of the United States, was discharged by a certificate of discharge of the bankrupt under the bankrupt act. The court holds that, the United States being the sovereign authority and not being named in any of the provisions of the act providing for the discharge of the bankrupt from his debts, nor in any of the required proceedings which lead to that result, a debt due to the United States is not within the operation of the act, and is not discharged by the discharge of the bankrupt in proceedings in bankruptcy. And the court, in discussing the question in the case, makes use of the following expressions: 'Attempt is made in argument to show that the preference given to debts of the United States does not exclude such debts from the operation of the certificate of discharge, because such debts are not named in the proviso annexed to the description of the fifth class of claims entitled to priority and full payment in preference to general creditors; but the court is not able to concur in the proposition, as it is quite clear that the proceedings in bankruptcy would very much embarrass tax-collectors without a saving clause in that behalf, and to that end it was provided that "nothing contained in this act shall interfere with the assessment and collection of taxes by the authority of the United States or any state." Consequently taxes, whether federal or state, may be collected in the ordinary mode; but if not collected, and the property of the bankrupt passes to and is administered by the assignee, the taxes are then entitled to the priority and preference provided in the same section of the bankrupt act. Nothing, there-

fore, can be inferred from that proviso inconsistent with the proposition that the sovereign authority is not bound by the provisions of the bankrupt act, unless therein named.'"

It is on these expressions, that, on behalf of the state of Texas, reliance is placed that this claim for taxes is entitled to priority.

The register does not understand the language of the court as declaring, in the case where the state other than that in which the proceedings in bankruptcy are pending has failed to collect taxes due to the state from the bankrupt, that the proviso to the fifth subdivision of the section regulating these preferences, that nothing contained in the Act shall Interfere with the assessment and collection of taxes by the authority of the United States, or of any state, creates a preference in favor of the state to which such taxes may be due. To go beyond giving a preference to taxes due to the state in which the proceedings in bankruptcy are pending, might open the door to very numerous

claims for preferences. The Act does not prevent the state to which the taxes are due from enforcing the claim of the state for taxes by levy or distraint, or by such other means or process as the laws of the state may provide; and this notwithstanding the debtor may have obtained his discharge in bankruptcy. To refuse to give the claim a preference is not to interfere with the collection of the tax. The debt may be proved in the proceedings in bankruptcy, but within the jurisdiction of the state it is not discharged by the certificate of discharge. But the only priority and preference in the distribution of the assets of the estate in bankruptcy of the bankrupt, given by the section in question of the statute, to taxes due to a state, is the priority and preference given by the third sub-division of the section, to taxes and assessments made under the laws of the state in which the proceedings in bankruptcy are pending.

BLATCHFORD, District Judge. I concur in the conclusion of the register, that the claim in question is not entitled to a preference or priority in payment.

[1] {Reported by Robert D. Benedict, Esq., and Benj. Lincoln Benedict, Esq., and here reprinted by permission.}