

Case No. 3,172.

[1 Wkly. Notes Cas. 30.]

IN RE COOKE ET AL.

District Court, E. D. Pennsylvania.

Oct. 14 and 15, 1874.

SUIT IN STATE COURT PENDING PROCEEDINGS IN BANKRUPTCY—LEAVE TO CONTINUE FOR PURPOSES OF LIQUIDATION.

[Where suit is pending against a bankrupt in the court of another state, the federal court may allow the debt to be proved provisionally, and authorize the suit to proceed for the purposes of liquidation; securing to the trustee of the creditors the right to resist the claim, either in the pending suit, or by a proceeding in equity.]

[In bankruptcy. In the matter of Jay Cooke, W. G. Morehead, H. C. Fahnestock, H. D. Cooke, Pitt Cooke, G. C. Thomas, James A. Garland, and Jay Cooke, Jr.]

De Graff & Co. brought suit in Minnesota against Morehead, one of the bankrupts, before petition filed, to recover for breach of a construction contract, and applied for leave to proceed in that suit for the purpose of liquidation.

Dickson and Ashurst, for the trustee in bankruptcy, read affidavits showing that the real question in the Minnesota suit was not as to the amount of damages suffered by the breach of contract, but whether there was a liability on the part of the defendant; and that this latter question depended upon the right of the defendant to reform the contract, and show that it was made with Morehead as agent of a corporation merely, his agency being known at the time by the plaintiffs.

Mr. Clough, of Minnesota, for De Graff & Co.

Mr. Murtrie, for bankrupts.

THE COURT, after a long discussion, ordered proof of De Graff's debt to be made before the register provisionally, and authorized the suit in Minnesota to proceed for the purpose of liquidation, seeming to the trustee the right to resist the claim, either in the suit brought, or by a proceeding in equity.