

Case No. 3,949.
[4 Dill. 532.]¹

IN RE DODGE.

Circuit Court, D. Iowa.

1877.

BANKRUPT ACT—REV. ST. § 5101—STATE AS PREFERRED CREDITOR.

Under the bankrupt act [of 18(57 (14 Stat. 517)),—Rev. St § 5 101,—the state is entitled to be preferred to private creditors of the bankrupt.

Appeal from the district court of the United States for the district of Iowa.

The bankrupt was indebted to the state of Iowa, on account of contract, for the labor of convicts confined in the penitentiary at Fort Madison, the debt being secured by bond with sureties. The question arose, whether or not, under section 5101, Rev. St U. S., the state has a right to have its claim declared prior to those of other creditors, and to have the same paid in full out of proceeds of bankrupt's estate in hands of assignee? The assignee objected to the allowance of same as a preferred claim, urging that congress had not intended by said section 5101 to give a state any greater preference under the bankrupt law than the statutes of such state gave to it, and that there is no statute in the state of Iowa giving the state such a preference; therefore, congress could not do so. The assignee also urged that a law which provides that one creditor, whether a state or individual, having no lien prior to bankruptcy, by virtue of contract, or statute, or custom, or otherwise, shall be paid, to the exclusion or prejudice of other creditors, violates the fundamental principles upon which a bankrupt law is based, and that it is simply a legislative confiscation of the debtor's estate for the benefit of a privileged class, and, when passed by congress, is unconstitutional and void. The district court ordered that the claim be allowed in full, as a preferred debt, and that the assignee pay the same out of funds in his hands belonging to said estate, after paying prior claims, if any. The order was brought to the circuit court for review.

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Craig & Collier, for the State.

McCrary & Hageman, for assignee.

MILLER, Circuit Justice, after hearing the argument of counsel, affirmed the judgment of the district court Affirmed.

¹ [Reported by Hon. John F. Dillon, Circuit Judge, and here reprinted by permission.]