EX PARTE EAMES.

Case No. 4,237.

{2 Story, 322;[1] 1 N. Y. Leg. Obs. 212; 5 Law Rep. 117.}

Circuit Court, D. Massachusetts. May Term, 1842.

BANKRUPTCY—STATE INSOLVENCY PROCEEDINGS—INJUNCTION.

1. The bankrupt law of the United States {of 1841 (5 Stat. 440)} upon going into operation in February, 1842, ipso facto suspended all action upon future cases arising under state insolvent laws, where the insolvent persons were within the purview of the bankrupt law.

{Cited in Sullivan v. Hieskill, Case No. 13,594; Goodwin v. Sharkey. 5 Abb. Pr. (N. S.) 64; Re Wallace, Case No. 17,094; Van Nostrand v. Carr, 30 Md. 128; Thornhill v. Bank of Louisiana. Case No. 13,992; Day v. Bardwell, 97 Mass. 246; Re Mallory, Case No. 8,991; Re Independent Ins. Co., Id. 7,017; Re Reynolds, Id. 11,723; Globe Ins. Co. v. Cleveland Ins. Co., Id. 5,486.}

2. Where A took advantage of the insolvent law of Massachusetts after the bankrupt law of the United States went into operation, and an assignee was duly appointed in pursuance of the law of Massachusetts, and A subsequently petitioned to be declared a bankrupt under the law of the United States, it was *held,* that an injunction ought to issue against B to restrain him from intermeddling with the property of A.

{Cited in Re Mallory, Case No. 8,991; Re Brinkman, Id. 1,884.}

This was a case certified from the district court upon a point arising in bankruptcy. The petition stated, that on the nineteenth of April, 1842, the petitioner {Lucius Eames} filed his petition in the district court, praying, that he might be declared a bankrupt, pursuant to the statute; that, prior to the filing of the said petition, and on the fourteenth day of February, 1842, Charles Arnold and Henry Adams, merchants, and partners, under the name of Charles Arnold & Company, of Boston, being creditors of the petitioner and one Hamlin, his late partner, to the amount of upwards of fourteen hundred dollars, caused certain property, to wit: the stock in trade of the petitioner, of the value of about twenty-seven hundred dollars, to be attached, and taken into the possession of the sheriff of the county of Essex, by virtue of a writ sued out by them against the petitioner on the fourteenth day of February, 1842, and made returnable at the court of common pleas for the county of Suffolk, then next to be holden in Boston in April, which said suit was still pending and undecided; that on the twelfth day of March, 1842, and prior to the filing of said petition, being unable to pay his debts, the petitioner applied to David Roberts, Esq., a master in chancery, of the county of Essex, for the benefit of an act entitled, "An act for the relief of insolvent debtors, and the more equal distribution of their assets," enacted by the authority of the state of Massachusetts, on the twenty-third day of April, 1838; supposing said law to be unrepealed and in full force at the time of his said application for the benefit thereof; that upon his said application, a warrant was issued and publication made and other proceedings had, pursuant to the act last named, and that on the twenty-eighth day of March, 1842, John Ayers, of Boston, was duly appointed the assignee of

the goods and estate of the petitioner, and accepted said trust under the act aforesaid; that after the appointment of said assignee, he was informed that doubts were entertained respecting the validity of said proceedings under the said insolvent act, and that he was advised by counsel, that the same had been repealed, from and after the first day of February, 1842, by force of the statute of the United States, establishing a uniform system of bankruptcy, and was recommended, in behalf of his creditors, to file his said petition in this honorable court, for the purpose of protecting the property aforesaid for the benefit of all his creditors, if the assignment aforesaid should be adjudged invalid; that said Arnold & Company were seeking and intended to secure payment in full of the debt due to them from the petitioner and his partner, out of the property aforesaid, and to levy an execution thereon, by means of the suit and attachment aforesaid, to the great injury and detriment of the other creditors of the petitioner, and contrary to law and equity; that said Ayers was seeking to obtain possession of said property under his said appointment as assignee as aforesaid, and that if, as the petitioner had reason to apprehend, the proceedings under said act of the state of Massachusetts should prove to be invalid, or if said Arnold & Company should levy any execution upon said property, the assignee of the estate of the petitioner, who might be appointed upon the said petition, would be put to great trouble and expense in recovering said property, or its value, for the benefit of all the creditors of the petitioner under the said statute of the United States. Wherefore he prayed, that an injunction might issue to restrain said Arnold & Company from prosecuting further their said suit, and to restrain them and

said Ayers from further intermeddling with said property; and for general relief. Upon the hearing in the district court, the following question was ordered to be adjourned into the circuit court: "Whether, by law, an injunction can be issued against said Ayers, as prayed for in the said petition."

Mr. Dehon, for petitioner.

STORY, Circuit Justice. The question for the decision of this court is, whether by law an injunction can be issued against Ayers, the assignee of Eames, under the insolvent act of Massachusetts, as prayed for in the petition of Eames; and this involves the simple consideration, whether the bankrupt act of the United States of 1841, c. 9, when it came into operation in February last, suspended the operation of the insolvent act of Massachusetts, as to persons within the purview of the bankrupt act, who might afterward become insolvents. If it did, then the injunction ought to be granted; if it did not, then it should be refused.

My opinion is, that, as soon as the bankrupt act went into operation in February last, it, ipso facto, suspended all action upon future cases, arising under the state insolvent laws, where the insolvent persons were within the purview of the bankrupt act. I say future cases, because very different considerations would, or might apply, where proceedings under any state insolvent laws were commenced, and were in progress before the bankrupt act went into operation. It appears to me, that both systems cannot be in operation or apply at the same time to the same persons; and where the state and national legislation upon the same subject, and the same persons, come in conflict, the national laws must prevail, and suspend the operation of the state laws. This, as far as I know, has been the uniform doctrine, maintained in all the courts of the United States.

Indeed, I consider this whole matter in effect disposed of by the reasoning of the supreme court in the case of Sturges v. Crowninshield, 4 Wheat. [17 U. S.] 122. Mr. Justice Washington and myself were of opinion in that case, that the power to pass a bankrupt law was exclusively vested in congress by the constitution of the United States; and that no state could pass a bankrupt law, or an insolvent law, having the effect of a bankrupt law, where it discharged the debtor from the obligation of his prior contracts.[2] Mr. Justice Todd was absent from indisposition, and therefore did not sit in the cause. The other four members of the court (constituting a majority,) concurred in the decision, which was pronounced by Mr. Chief Justice Marshall. But all the court were agreed, that when congress did pass a bankrupt act, it was supreme, and that the state laws must yield to it, and could no longer operate upon persons or cases within the purview of such act. The enactment of such an act suspended the state laws on the same subject, and created a disability in the states to exercise powers of the like nature. Sturges v. Crowninshield, 4 Wheat. [17 U. S.] 196. The court went further; and asserted that the bankrupt act of 1800, c. 19, had that very operation, except so far as the 61st section of the act modified

or allowed the exercise of the power by the states. Sturges v. Crowninshield, 4 Wheat. {17 U. S.} 201, 202. The case of Ogden v. Saunders, 12 Wheat. {25 U. S.} 213, 264, 269, 273, 276, 278, 296, 311, 314, fully recognized, and has always been understood to confirm and settle, the same principle. It seems to me, therefore, that nothing remains, upon which an argument can be founded, that the insolvent laws of Massachusetts are not, as to persons and cases, within the provisions of the bankrupt act, completely suspended. Each system is to act upon the same subject-matter, upon the same property, upon the same rights, and upon the same persons—creditors, as well as debtors. Both cannot go on together, without direct and positive collision; and the moment that the bankrupt act does or may operate upon the person or the case, that moment it virtually supersedes all state legislation.

I shall, therefore, direct it to be certified to the district court, that in this case, by law, an injunction can be issued against the said Ayers, as prayed for in the said petition of Eames.

[1] {Reported by William W. Story. Esq.}

[2] See Mr. Justice Washington's opinion in Ogden v. Saunders, 12 Wheat. {25 U. S.} 263, 264.