

Case No. 4,252. EASTBURN ET AL. V. YARDLEY.

[30 Leg. Int. 404;¹ 5 Leg. Gaz. 381.]

Circuit Court, E. D. Pennsylvania.

Nov. 21, 1873.

BANKRUPTCY—RESTRAINING COLLECTION OF JUDGMENT AGAINST DEBTOR.

1. An execution creditor having levied upon the personal property of the debtor by virtue of a fi. fa. issued on a judgment entered more than six months before the levy and before a petition in bankruptcy is filed, can, upon the debtor filing his petition in bankruptcy, be restrained for equitable reasons by injunction on a bill in equity of a creditor in the circuit court of the United States, from selling the personal property of the bankrupts previously levied upon, until an assignee in bankruptcy be chosen or appointed, the lien of the levy remaining.
2. Where such an execution creditor has a twofold security on real estate as well as on personal property, an injunction will be issued to prevent a sacrifice by sale of the personal property of the bankrupt, at least until an assignee in bankruptcy can be chosen or appointed, or for a sufficient time to enable the unsecured creditors to raise money to pay off or take an assignment of the judgment of the execution creditor, although the judgment was entered more than six months before the fi. fa. issued and the petition in bankruptcy was filed after levy made.

Bill in equity. In this case, Elizabeth Yardley, executrix of the last will and testament of Mahlon Yardley, deceased, issued a fi. fa. out of the court of common pleas of Bucks county, and levied upon the real and personal property of Isaac S. Eastburn, her debtor. A levy was made thereon by John M. Purdy, Esq., high sheriff of the county of Bucks, and bills put up November 15th, 1873, advertising the personal property for sale on the 22d day of November, 1873. On the 17th day of November, 1873, the said Isaac S. Eastburn, filed his petition in bankruptcy in the district court of the United States for the eastern district of Pennsylvania, and afterwards on the 20th day of November, 1873, a joint bill in equity was filed in the circuit court of the United States, for the eastern district of Pennsylvania, by Isaac S. Eastburn, the then bankrupt and Henry Haines, an unsecured creditor to the amount of \$3,000, praying (inter alia.) that an injunction be issued to enjoin and restrain the execution creditor and sheriff from proceeding to sell the personal property of bankrupt, in order to prevent a sacrifice of the same, until an assignee in bankruptcy be chosen or appointed. November 21st, 1873, the case came on to be heard, and after hearing, a temporary injunction was granted. It had been refused upon a previous application of the bankrupt as a sole complainant.

Abraham H. Jones, for complainants.

George Lear, for execution creditor and sheriff.

The following interlocutory decree was made by CADWALADER, District Judge:

The court, as at present advised, does not see sufficient cause to order a temporary injunction, except as to the personal effects levied upon; nor as to those effects for any reason that should prevent them from being ultimately liable to the execution. But foras-

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much as the execution creditor may have a twofold security on real estate, as well as on the said personal effects, and the creditors in bankruptcy only a single security, to wit: on these effects, and a brief period ought therefore, to be allowed the said creditors to pay the execution creditor, and obtain a transfer of her judgment and execution, or to enable them to obtain such other equitable relief as may not impair her rights. Therefore the defendant, Elizabeth Yardley, execution creditor as aforesaid, is restrained, until further direction, from proceeding under the said execution, as to the said personal effects, so, however, as not to impair any security under the levy thereon, which is to stand and avail her against the assignee and estate in bankruptcy, as if this order had not been made.

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