

Case No. 4,973.

FOSTER ET AL. V. INGLEE.

{13 N. B. R. (1876) 239.}<sup>1</sup>

District Court, D. Maine.

BANKRUPTCY—ALLOWANCE FOR TAXES ON REAL ESTATE TAKEN BY CREDITORS PRIOR TO FILING OF THE PETITION.

Where it appears that creditors have taken the real estate of the bankrupts by levy or execution prior to the filing of the petition in bankruptcy, and under attachments valid as against the assignee, and the collector of taxes makes proof against the bankrupt estate, for taxes due on such real estate, *held*, that it would be inequitable to allow the attaching creditors to escape the burden of the taxes on the estate they have acquired under their levy, if the taxes were at the time of the levy allowed and deducted from the valuation made by the appraisers.

{William} Inglee, the collector of taxes, having made his proof of taxes assessed on the real estate of the bankrupts [E. Longfellow and son], prior to the commencement of the proceedings in bankruptcy, asked for an order for their payment by the assignees [Jeremiah Foster and others]; thereupon the assignees applied to the register for a reexamination of the proof.

H. L. Mitchell, for assignees.

John F. Lynch, for deposing creditor.

FOX, District Judge. State taxes duly assessed have a preference over general creditors under the bankrupt act [of 1867 (14 Stat. 517)]; but under the laws of Maine a lien is created for taxes on real estate. This estate has been taken by creditors under attachments valid as against the assignees, and it would be inequitable to allow these creditors to escape the burden of the taxes on the estate they have acquired under their levy, if the taxes were at the time of the

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levy allowed and deducted from the valuation made by the appraisers. The proof is therefore suspended to ascertain that fact If the creditors had them deducted from the value at the time of appraisal, the collector should in equity be required to assert his lien therefor against the estate levied upon. If they were not deducted and allowed, then the taxes should be proved as a preferred claim against the estate.

<sup>1</sup> [Reprinted by permission.]