IN RE FOX ET AL.

Case No. 5,007.
{8 Chi. Leg. News, 313.}

Circuit Court, N. D. Illinois.

June 19, 1876.[1]

BANKRUPTCY—SALE OF PERSONAL PROPERTY—POWER OF COURT TO SET A SIDE—RIGHTS OF PURCHASERS—NOTICE—SUPERVISORY JURISDICTION—RIGHT TO GRANT A SUPERSEDEAS—REPLEVIN IN STATE COURT.

{An order made by the circuit court, in the exercise of its supervisory jurisdiction over the proceedings of the district court in bankruptcy, may be reviewed on appeal by the supreme court.}

{See note at end of case.}

In bankruptcy. At chambers. On motion for a supersedeas from the decision of Judge Drummond, of the United States circuit court, to the supreme court, in the matter of the possession of the dredging machinery and property of the bankrupt firm of Fox & Howard. Judge Blodgett confirmed, some months ago, the sale of this property for 840,500, to Conro & Carkin, and subsequently Judge Drummond reversed the action of Judge Blodgett, and decreed the right of possession to Crane & Hodgkins, the original bidders, directing that the former account to the latter for the profits arising therefrom during the time they have used it. An application was thereupon made for an appeal to the supreme court, which was refused by Judge Drummond, who intimated, however, that if they thought an appeal would lie from his decree, where it was made under the supervisory jurisdiction given the circuit court by the bankrupt law {of 1867 (14 Stat 517)}, they could present the matter before Justice Davis. Therefore, when Justice Davis was in Chicago on the 3d inst, the matter was fully presented to him and he took it under advisement Prior to this, however, the property was taken, on a writ of replevin issued by the supreme court of Cook county, from the possession of Conro & Carkin, on giving bonds in $80,000. This was done after the decision of Judge Drummond.

DAVIS, Circuit Justice, said this case presented no difficulty for him when it was first heard, but he had since then turned the matter over in his mind a good deal, and the first impressions he had about it had been confirmed. The only point that was argued and that he had considered at all, was whether there was such a question growing out of the exercise by the district court of its summary jurisdiction, as ought to be reviewed by the supreme court He had come to the conclusion when he had heard the case, and reflection had convinced him that he was right, that the case ought to go to the supreme court for its opinion. He did not want to express any opinion as to whether the district court had jurisdiction in this case or not. It all turned on this point in his opinion. Nor had he read the evidence with a view to ascertaining anything in relation to the merits of the transaction. A good deal could be said on both sides of that question. It was one of

great importance, and he knew of no decision in this country, either by the district court or by the United States circuit court, that exactly met it In his own opinion there were grave doubts whether the district court had summary jurisdiction of this matter; and, although, as he had stated before, he had no fixed opinion upon that question, yet he thought it was right to the party, under the rules applicable to all courts granting a writ of supersedeas, to be allowed to take the case to the supreme court He did not wish to go on and give his opinion at all. Although he had a strong opinion as the case exists now, he did not wish to give any at all upon the question, reserving himself free, when the case shall be argued in the supreme court, in order to pass upon it. It was very certain that the question was one that ought to be passed upon by the supreme court If the supreme court was of opinion that the district court had summary jurisdiction in this matter, the case, of course, would be dismissed. If, in the judgment of the supreme court, the district court had not the summary jurisdiction which was invoked, then the case might be retained there, and could be disposed of at that time. Had there not been so much feeling on this subject he would have had no doubt that this was a proper case to take to the supreme court He did not believe it was the intention of congress to give the district court exclusive jurisdiction in anything. It was neither his duty nor pleasure to pass upon any questions passed upon by the circuit or district courts except what had been brought up here to be determined now. If there was any question about this case at all, with reference to the court granting a supersedeas, there was no question that when Mr. Cooper, on behalf of Crane & Hodgkins, made an application for a writ of replevin, he was guilty of a gross contempt of court. The question as to whether these parties have been in contempt or not was for the district and circuit courts to determine.

Thereupon Justice Davis directed the clerk, Bradley, to draw up the supersedeas, in order that he could sign it Considerable side discussion ensued between Mr. Cooper, Mr. Ayers, and Justice Davis regarding the matter. Justice Davis said that inasmuch as the property had been replevied from Conro & Carkin, contracts made, and the season pretty well advanced, he was of the opinion that it would be about the proper thing

to place the property in the hands of a receiver until the matter could finally he disposed of. The great difficulty, he said, existed in the bad feeling between the respective parties; it was entirely wrong to go into the state court for the purpose of obtaining the property in question when it was in the bankruptcy court of the United States. That, however, was a matter, he said, between Judges Drummond and Blodgett He thought there was not a spirit of compromise manifested by either side.

{NOTE. The appeal of Conro & Carkin was dismissed by the supreme court, Mr. Chief Justice Waite delivering the opinion, on the ground that appeals do not lie to the supreme court from decisions of the circuit courts in the exercise of their supervisory jurisdiction under the bankrupt law. In this case the rights of the parties grew out of a sale made by the authority of the court under section 5065, Rev. St The bids were received by the provisional assignee; but the court determined which should be accepted, and gave directions as to the transfer of title. Clearly, then, remarked the learned justice, "what was done as to the first and second sale was in the course of the bankruptcy proceeding, and part of that suit. As such, it was subject to revision in the circuit court under its supervisory jurisdiction." Conro v. Crane. 94 U. S. 441.

{In May, 1877, the district court ordered that Conro & Carkin have leave to withdraw the $40,500 paid for the machinery "on giving proper security. The money was paid to them, whereupon Crane & Hodgkins filed a bill in the circuit court against Conro & Carkin and the assignee, charging fraud and conspiracy, etc. The circuit court rendered a decree for complainant, and Conro et al. appealed to the supreme court. The decree of the circuit court was there reversed, and the cause remanded, with directions to the circuit court to dismiss the bill. Conro v. Crane, 110 U. S. 403, 4 Sup. Ct. 102}

[1] {Reversed in 94 U. S. 441.}