Case No. 7,023.

IN RE INDIANAPOLIS, C. & L. R. CO.

{5 Biss. 287; 8 N. B. R. 302; 18 Int. Rev. Rec. 79: 21 Pittsb. Leg. J. 4; 5 Leg. Gaz. 275.}[1]

Circuit Court, D. Indiana. May, 1873.

BANKRUPTCY—WHERE MAJORITY OF CREDITORS DESIRE IT AND OFFER TO SECURE CLAIMS OF THOSE OBJECTING—WHEN FOR BEST INTERESTS OF ALL PARTIES—A BANKRUPT COURT HAS FULL EQUITABLE DISCRETION—THE PROPER PRACTICE.

1. Where the stockholders of a bankrupt railroad company purchase in good faith all the outstanding floating indebtedness of the company, except a few minor claims, and all the creditors, except those representing these few claims, desire such a result, they should he allowed to have the bankruptcy proceedings dismissed, on giving proper security for the payment of the objecting creditors.

2. It being evidently for the best interests of all parties, and the desire of a large majority, that the corporation he managed in the customary manner, the bankrupt court will not retain the custody and control of its property, to assist minor creditors in coercing their claims.

3. A bankrupt court has full equitable discretion, and can allow a case to be withdrawn, provided it is done without prejudice to the interests of any party.

4. The proper practice in such case is to require the deposit of adequate security for the payment of the claims of the non-assenting creditors, to remain until any contingency about them is ultimately settled by the highest court to which a case can be taken; the claims to be prosecuted with reasonable diligence.

{Cited in Re Great Western Tel. Co., Case No. 5,739.}

This was a petition under the second section of the bankrupt act, by the Whitewater Valley R. R, Co., a creditor of the bankrupt, for the review of an order of the district court dismissing the proceedings in bankruptcy, on the motion of all the creditors except the petitioner and Charles Dwight. The order of the district court required security for the payment of Dwight's claim, but made no provision for securing whatever claim the petitioner might be able to establish against the bankrupt. {Case unreported.} Prior to the commencement of proceedings in bankruptcy in this case, some of the stockholders of the bankrupt company, under a special law of Indiana, had filed a bill in the state court for relief against the company, on the ground that it had become insolvent, and receivers were appointed by the state court to take charge of the property of the company, and, under the order of the court, went into possession of all its effects. On the 5th of May, 1871, a petition in bankruptcy was filed against the company. Between the date of filing the petition and the adjudication of bankruptcy by the district court, on the 8th of November, 1871, the case in the state court was transferred to this court under the acts of congress of July 27, 1866 [14 Stat. 306],

prelimnd March 2, 1867 [14 Stat. 558], and the receivers appointed by the state court were recognized by and continued to act as receivers under the authority of the circuit court, and when the proceedings in bankruptcy were commenced the usual order to take possession of the goods of the bankrupt was not put in force, for the reason that the property was in the hands of receivers. After the transfer of the case to the circuit court of the United States, various parties intervened and filed bills and cross-bills, claiming to be bondholders under mortgages which had been given by the company prior to the commencement of the proceedings in the state court, and which it was conceded were valid and prior liens against the railroad company, both as to the stockholders who commenced the proceedings in the state court, and as to the parties who commenced the proceedings in bankruptcy in the district court. The value of the property and effects of the company was between twelve and fifteen million dollars. Independent of the bonded debt of the company there was at the time of the commencement of these various proceedings a large floating debt, amounting to nearly a million dollars. On the 13th of February, 1873, a petition was filed in the bankrupt court to vacate the proceedings in bankruptcy, by certain parties who represented themselves as trustees of the stockholders, and who, as appeared from the statements in the petition, and which were not controverted, had been so appointed for the purpose of buying up all the floating claims against the company by means of a fund which had been voluntarily advanced for that purpose by the stockholders; and they had accordingly bought up all these various claims with the exception of one contested claim of about ten thousand dollars, due to Charles Dwight, and a claim of the Globe National Bank against the bankrupt company as acceptors of sundry bills of exchange held by the bank. They also stated in their petition that all the various creditors, including the bonded creditors and the Globe National Bank, and all the creditors of the floating debt which they represented, desired that the proceedings in bankruptcy should be superseded, and the company be once more permitted to take possession of its property and effects; the only party dissenting to this arrangement being Charles Dwight. When this petition was filed by the trustees of the stockholders, Dwight appeared by counsel and objected to granting the order to supersede the proceedings in bankruptcy on various grounds. The Whitewater Valley Railroad Company also appeared and objected to the prayer of the petition of the trustees for the reason that they had previously made a contract with the Indianapolis, Cincinnati and Lafayette R. R. Co., by which the latter had run the railroad of the Whitewater Valley R. R. Co., stating that there were various claims existing or contingent, for which the Indianapolis, Cincinnati and Lafayette R. R. were liable under their contract. It was not stated who were the owners of these claims, nor the amounts, nor on what grounds they were payable, except in a general way that they were for the right of way, and for stock that had been injured in the operation of the road while leased by the bankrupt company. The petition of the trustees to the district

court, while denying the validity of Dwight's claim, proposed to make provision for its ultimate payment if it should be sustained before any competent court. The district court made an order superseding all the proceedings in bankruptcy, but requiring as a condition a deposit of United States bonds sufficient to secure Dwight's claim (which deposit was in point of fact made by the trustees), but making no provision whatever for any claim which might be found due the Whitewater Valley R. R. Co. To review this order of the district court the Whitewater Valley R. R. Co. filed this petition under the second section of the bankrupt law, on the ground that the claim of Dwight had been proved, among a large number of other claims, in the district court, and before the order was made superseding the proceedings the petitioner had also presented its proof of a claim as drawer of the bill of exchange held by the Globe National Bank, a portion of which had been paid to the bank, and insisted that there could be no dismissal of the proceedings in bankruptcy while any claim was pending in the district court, and especially when there was no provision made for the claims of the petitioner; that it was not competent for the district court to retain as a fund of the bankrupt and subject to its disposition the bonds which were deposited for the security of Dwight; that the proceedings should have been retained, or else entirely dismissed.

Porter, Harrison & Hines, for petitioner in review, cited In re Sherburne {Case No. 12,758}; In re Boston, H. & E. R. Co. {Id. 1,677}; In re Ellerhorst {Id. 4,381}.

Hendricks, Hord & Hendricks and Joseph E. McDonald, for respondents, cited In re Miller {Id. 9,553}.

DRUMMOND, Circuit Judge. It is to be observed that there was no property in possession of the bankrupt court. Assignees had been appointed, but they were nominal and were the same persons that were receivers under the order of the state court, and that of the circuit court of the United States; and all the property of the bankrupt was held by the receivers of the road, managed by them, and, of course, subject to all valid liens subsisting against the company; and if the property had been ultimately controlled by the bankrupt court, it, of course, would have been disposed of in such a way as to marshal the different claims and liens existing against the road,

and they must have been paid according to their priority, the bondholders confessedly holding the first lien.

It was to avoid the sacrifice of so much property, which it was thought would be necessarily incurred if it remained in the bankrupt court, that the stockholders made the arrangement which has been referred to, and which was assented to by all the creditors except only Charles Dwight and the Whitewater Valley R. R. Co., and the question is, whether with such an immense property, with so many and various liens and incumbrances upon it, and such a great preponderance, both in numbers and amounts, of those holding these liens, desiring the withdrawal of the case from the bankrupt court, it should be prevented by the opposition of the two creditors already named. It is quite clear that if the case had been wound up in the bankrupt court, and the property disposed of, the probability of its realizing anything for the two non-assenting creditors would not have been very great, as all these other claims would have first to be paid; and, in fact, there would be great doubt, perhaps, whether any portion of the floating debt would be paid, under which, of; course, would be included that of the two non-assenting creditors, and, therefore, it may be a question whether it was not most for the interest of those non-assenting creditors themselves that the case should be withdrawn from the bankrupt court, and some arrangement made by which their claims could be satisfied, and thus leave this large property in the control of the company, with the assent of the other creditors, to be made available, if it can be, for the ultimate payment of the claims which might be brought against it.

It is also a question, whether, in a case like this, it is for the interest of all the various parties that the property should remain in the bankrupt court, or be withdrawn from it. For example, there could be no controversy that it would be entirely competent for the party against whom a decree in bankruptcy was made, with the assent of all his creditors, to withdraw it from the bankrupt court, and the question is, whether the opposition of an insignificant portion of the creditors can prevent that result. I think that the bankrupt court, as a court of equity, has a full equitable discretion upon this subject, and can allow a case to be withdrawn from it, provided it is done without prejudice to the interests of any of the parties, debtors or creditors, who are before it. And in this case I think it was competent for the bankrupt court to allow the case to be withdrawn from it, protecting the interests of the different non-assenting creditors. And if the court had given the same protection to the claims of the Whitewater Valley R. R. Co. that it did to that of Dwight, this court would not feel inclined to interfere with the decree. The reason why the district court made a distinction between the claims of the two non-assenting creditors was undoubtedly because that of the Whitewater Valley R. R. Co. was hot set forth so distinctly as the other, being somewhat vague and uncertain, and depending more or less upon contingencies. But it seems to me, as long as there was a creditor who prima facie

had a claim against the bankrupt company which was liable to be proved, before the court could dismiss the proceedings it should have given some security or protection to that claim. And it will be recollected that there was an allegation, which was not denied, that the Whitewater Valley R. R. Co., had paid a considerable amount as drawer of bills of exchange, held by the Globe National Bank, and which, therefore, was a distinct and positive claim, either legal or equitable, against the bankrupt. And it is further to be observed, perhaps, as a reason why the district court made a discrimination between the claims of the non-assenting creditors, that the proceedings in bankruptcy had been pending some time; that all the other claims had been proved in the bankrupt court except that of the Whitewater Valley R. R. Co. Some excuse is given for the fact that these claims of the latter company were not proved in bankruptcy, that one of these assignees, who was also one of the receivers, had requested that the proof should be postponed and should not then be presented in the bankrupt court.

On the whole, then, it seems to me, that if the proper protection can be given to the claims of Dwight and of the Whitewater Valley R. R. Co., it would be unwise, and contrary to the best interests of all concerned, for the property to remain in the bankrupt court; and that it is desirable that it should be restored to the company, to enable it, with the aid and co-operation of all the principal creditors and that of the stockholders, to endeavor to retrieve itself from its present embarrassments. The property is very large, the business done is apparently quite profitable, and there is certainly strong reason for supposing that with time the company may be able to extricate itself from the load of debt which now oppresses it. It seems to me, therefore, nothing more than the exercise of a reasonable equitable power which rests in the bankrupt court, to allow the case to be withdrawn from its jurisdiction under circumstances like these, and giving adequate security to one or two parties holding claims, who are opposed to the withdrawal, from causes which do not fully appear, and which are either real or imaginary, but the prominent object of whose opposition is to coerce some settlement from the great mass of the creditors. Therefore, this court, while conceding the correctness of the principle upon which the decree of the district court was made, will modify its order dismissing the proceedings in bankruptcy, and will allow it to be done upon the condition

that the bonds which have been deposited for the security of Mr. Dwight, shall be put in some safe place as indemnity for any decree or judgment which he may obtain for his claim against the Indianapolis, Cincinnati & Lafayette R. R. Co., there to remain until the case is ultimately disposed of by the highest court to which it can be taken; and in this particular instance, as Mr. Dwight is a citizen of Ohio, the court will require the suit to be brought in the circuit court of the United States for this district; and also upon the condition that adequate security is given for any claims which may ultimately be established by the Whitewater Valley R. R. Co. against the Indianapolis, Cincinnati and Lafayette R. R. Co.—the claims both of Dwight and the Whitewater Valley R. R. Co., to be presented and prosecuted with reasonable diligence, and in default thereof, any of the parties in interest to have the right to apply to the district court for the withdrawal of the bond and securities so deposited.

Decree accordingly.

NOTE. For a case in which claims against a partnership had been purchased in the interest of two of the partners, see In re Lathrop {Case No. 8,104}. There is nothing illegal or immoral in buying up the claims against a bankrupt for the purpose of staying proceedings. In re Pease {Id. 10,880}.

[1] {Reported by Josiah. H. Bissell, Esq., and here reprinted by permission. 18 Int. Rev. Rec. 79, and 21 Pittsb. Leg. J. 4, contain only partial reports.}