# IN RE IVES ET AL.

Case No. 7,115.

{5 Dill. 146;[1] 19 N. B. R. 97.}

Circuit Court, E. D. Missouri. March, 1879.

BANKRUPT ACT—JURISDICTION OF THE DISTRICT COURT IN BANKRUPTCY—RESIDENCE—CONCLUSIVENESS OF DECREE OF ADJUDICATION OF BANKRUPTCY—DISCHARGE.

1. Where the record of the bankruptcy court on its face shows that the court had jurisdiction to pass a decree adjudicating the debtor to be a bankrupt, and that such a decree was passed, it is conclusive as to the jurisdiction of the bankruptcy court, unless assailed in a direct proceeding to set aside or annul the same.

2. While such a decree remains in force, the bankrupt's discharge cannot be opposed on the ground that the facts stated in the petition of the debtor to be adjudicated a bankrupt, as to the length of his residence within the district, are not true.

{In review of the action of the district court of the United States for the Eastern district of Missouri.}

Ives & Porter, the bankrupts, filed a voluntary petition in bankruptcy in the district court for this district, on November 1st, 1877, and on the 10th day of the same month were adjudged to be bankrupts. The petition was in due form, and contained all the necessary allegations to show the jurisdiction of the court, and that the petitioners were entitled to be adjudicated bankrupts. An assignee was appointed, and the estate of the bankrupts administered in the usual way. Among the creditors, one Harvey Bates proved a claim in bankruptcy. Everything proceeded in the ordinary course, and on June 25th, 1878, the bankrupts filed their petition to be discharged, and the matter came on for hearing before the register, and, no objection being made, the register reported that they were entitled to their discharge. After the report was made the court allowed Mr. Bates to file his objections to the discharge. On the 2d day of August, 1878, Mr. Bates filed his objections, containing four specifications; the fourth specification being to the effect that the court had no jurisdiction to grant a discharge, because the bankrupts had not resided in the Eastern district of Missouri for six months next preceding November 1st, 1877, nor for the longest period during said six months, but only acquired a residence in said district on September 10th, 1877, prior to which they had resided in Indiana. The bankrupts, reserving objections, answered, denying all of the specifications, and alleging that they were bona fide residents of this district for the six months immediately preceding the filing of the petition in bankruptcy. The matter was heard upon the proofs, and the court, on September 9th, 1878, overruled the first three specifications and sustained the fourth, and thereupon "ordered that the discharge of the bankrupts herein be refused, and that the petition for adjudication heretofore filed by the bankrupts herein, together with all proceedings had thereunder, be and the same are hereby dismissed at the costs of the bankrupts." To review this order the present bill of review is filed.

J. La Due and William R. Walker, for bankrupts.

John D. Davis, for objecting creditor, Harvey Bates.

DILLON, Circuit Judge. The decision made by the district court is supported in two opinions of an able and experienced bankruptcy judge. In re Little {Case No. 8,391}, Blatchford, J.; In re Leighton {Id. 8,221}, decided by the same judge. A contrary opinion was given by another very learned judge. He Burke {Id. 2,156}, Deady, J.

The question is one of considerable importance, doubtless, and I have considered it with some care; but inasmuch as the bankrupt act is now repealed, I shall dispose of it without extended argument in support of my conclusion.

The district court not only has bankruptcy jurisdiction, but is the only court of original jurisdiction in bankruptcy. The petition filed in that court by the bankrupts was in due form in every respect, and set forth all the facts as to residence and otherwise necessary

to state a case within the jurisdiction of the court. An adjudication of bankruptcy on this petition was duly passed and entered. An assignee was appointed, a deed of assignment was executed, debts were proved, meetings of creditors held, and the estate administered. In due course, after the lapse of several months, the bankrupts applied for a discharge, whereupon one of the creditors, who had before proved a claim, appeared and opposed the discharge, on the ground that the court had no jurisdiction to grant it, by reason of the existence of a fact en pais, viz., want of residence in the district for the requisite length of time before the filing of the petition in bankruptcy.

It is my judgment that the effect of a decree of adjudication cannot be thus overcome. This objection is not among those specified in the act as grounds of opposing the discharge. Rev. St. §§ 5110, 5111. The principle decided in Michaels v. Post, 21 Wall. [88 U. S.] 398, and in Sloan v. Lewis, 22 Wall. [89 U. S.] 150, is inconsistent with the right to attack the decree of adjudication in this manner. "Such a decree," says the supreme court in the case first cited, "is in the nature of a decree in rem as respects the status of the party, and in case the court rendering it has jurisdiction (a case within whose jurisdiction was shown by the petition filed therein), it is only assailable by a direct proceeding in a competent court, if due notice was given and the adjudication was correct in form." So in the case of Sloan v. Lewis, where the record of the bankruptcy court showed on its face jurisdiction, it was held that the adjudication of bankruptcy was conclusive in a collateral action. "Where the record (of the bankruptcy court) shows jurisdiction," says the chief justice, "an adjudication of bankruptcy can only be assailed by a direct proceeding in a competent court." 22 Wall. [89 U. S.] 157. An instance of such a direct proceeding is presented in Re Goodfellow [Case No. 5,536], Lowell, J. The decree adjudging the debtors to be bankrupt was never attacked in the district court. No petition or other direct proceeding to set the same aside was ever made. It is not attacked in the objections filed by Mr. Bates to the discharge of the bankrupts. It remains to this present time unassailed and unreversed. The estate of the bankrupts has been administered under it.

It seems to me to be against the general principles of the law relating to the effect of judgments and decrees of courts, and without any support in the special provisions of the

bankrupt act, to allow a judgment, and especially such a judgment as a decree of adjudication in bankruptcy, to be overthrown, and all that has been done under it held to be void, in a proceeding in which the decree is not directly attacked, and where the question only arises incidentally on the application of the bankrupts for their discharge.

The decisions in the district courts referred to, holding a contrary view, were made before the decisions of the supreme court above cited, and are inconsistent with them, unless it can be held that the opposition to a discharge on this ground is a direct attack upon the decree adjudging the debtors to be bankrupt—a position I cannot admit to be sound.

The order of the district court dismissing the petition for adjudication is reversed, and the court ordered to overrule the fourth specification in opposition to the discharge, and to grant the discharge of the bankrupts. Ordered accordingly.

NOTE. Subsequently an application was made by the counsel for the objecting creditor to modify the order directing the district court to grant a discharge, and reserve the right to the objecting creditor to file a petition for a review of the order of the district court overruling the first three specifications in opposition to the discharge. In disposing of this application the circuit judge remarked:

"I have considered the application in this court by Mr. Davis on behalf of Mr. Harvey Bates, a creditor of Ives & Porter, to modify the decree or judgment rendered in this court on the petition for review, on the 27th ultimo. Briefly, the case is this: Ives & Porter filed a petition to be adjudged voluntary bankrupt., and were so adjudged. Mr. Bates, among others, filed a claim against the estate, in bankrupted, and proved the same. The proceedings took the usual course; an assignee was appointed, and the estate was administered in bankruptcy, and in due time the bankrupts filed their application to be discharged. Mr. Bates appeared and contested that application, and filed four specifications in objection thereto. Three of these specifications were among those enumerated in the bankrupt act [of 1867 (14 Stat. 517)] as proper to be filed, and the fourth was that the district court had no jurisdiction to grant a discharge, for the reason that the bankrupts had not resided in this district the longest period of the six months next preceding the filing of their petition in bankruptcy. Issues were made and proofs taken in respect of all the matters—the four specifications in opposition to the discharge—and the matter came on for a hearing on the merits. The district court overruled the first three specifications, but sustained the fourth, and dismissed the proceedings in bankruptcy. The bankrupts filed a petition for review, and on the hearing of that I held that it was not competent, by way of objecting to a discharge, to impeach the judgment of the court under the petition in bankruptcy adjudicating the debtors to be bankrupts; that such a judgment was like any other judgment of a court of competent jurisdiction, and could only be impeached by a direct proceeding, and therefore reversed the order of the district court dismissing the proceedings, and

ordered to be entered here a judgment directing the district court to grant the discharge. The record before me shows that the bankrupts took exception to the action of the district court in respect to the fourth specification, and all the testimony relating to that subject, to-wit, their residence, is preserved in the record. The district court denied, on the merits, the three other objections. This record does not disclose that any exception was taken or objection made to the action of the district court in that behalf. In the meanwhile the bankrupt act was repealed; and in the meanwhile several months have elapsed. Now the objecting creditor says: 'I want a modification of the decree of this court by which the district court was ordered to grant the discharge, so as to allow me to file a petition for review of the action of the district court in respect to the three specifications which it denied.'

"It was stated before me on the hearing that the petitioning creditor had no bill of exceptions; but it was expected—if this order was modified—to go into the district court and get a bill, so as to enable the action of the district court to be reviewed on that subject; and, further, that he was willing to submit the matter on the testimony and record as it is, when he had that exception. The whole spirit and tenor of the bankrupt act looks to a speedy closing of estates. If this was an appeal from a judgment or decree for money against the objecting creditor's claim which had been wholly denied by the district court, he could only have that action reviewed if he took an appeal within ten days. Now he comes in where the time is not specifically limited as in appeal—although in many courts they have a rule that it shall be filed within ten days—and wants, after the lapse of several months, the right reserved to file a petition to review the action of the district court as to matters to which he took no exception at the time. I think, under the circumstances, I ought to deny that, as he had a full hearing. Let the order stand as it was made. Ordered accordingly."

[1] {Reported by Hon. John F. Dillon, Circuit Judge, and here reprinted by permission.}