

Case No. 7,165.

IN RE JACOBY.

[1 N. B. R. 118;² Bankr. Reg. Supp. 26; 6 Int. Rev. Rec. 149.]

District Court, S. D. New York.

Oct. 18, 1867.

BANKRUPTCY—ARREST—STAY OF PROCEEDINGS AGAINST BANKRUPT IN
STATE COURTS.

The bankrupt was held in custody by the sheriff of the city and county of New York, under three
several orders of arrest. Four actions

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were pending against the bankrupt in state courts. *Held*, that proceedings will be stayed, and the bankrupt will be discharged from arrest in proper cases, until the question of his discharge in bankruptcy shall be passed upon in the bankruptcy court. Testimony ordered to be taken and certified by a referee as to whether the actions were for claims that would not be discharged in bankruptcy.

[Cited in *Re Wright*, Case No. 18,065; *Re Mallory*, Id. 8,991; *Re Brinkman*, Id. 1,884; *Ex parte Schulenburg*, 25 Fed. 212.]

In bankruptcy.

BLATCHFORD, District Judge. The order to show cause made herein on the 11th day of October, 1867, why Henry Jacoby, the above named bankrupt, should not be discharged from the custody of the sheriff of the city and county of New York, under three several orders of arrest named therein, and why all further proceedings in the four several actions named should not be stayed to await the determination of this court in bankruptcy upon the question of the discharge of said Henry Jacoby, having come on to be heard, and it appearing that a copy of the said order to show cause had been duly served upon Messrs. Capron & Lake, two of the attorneys therein named. Now, after hearing Aaron Frank, Esq., for the motion, and Charles H. Smith, Esq., Charles H. Van Brunt, Esq., and Samuel Hirsch, Esq., in opposition thereto, it is ordered that the said Jacoby be and he is hereby discharged from the arrest and imprisonment under which he is held by the sheriff of the city and county of New York under the order of arrest made in the action in the court of common pleas in and for the city and county of New York, wherein Lazarus Hallgarten is plaintiff, and Henry Jacoby and another are defendants, and that all further proceedings in the said action be and the same hereby are stayed to await the determination of this court in bankruptcy on the question of the discharge of said Jacoby. And it is further ordered that all further proceedings in the action now pending in the supreme court of the state of New York in and for the city and county of New York, wherein John A. Lockwood is plaintiff, and Henry Jacoby and another are defendants, be and the same hereby are stayed to await the determination of this court in bankruptcy on the question of the discharge of said Henry Jacoby.

And it is further ordered that in the action in the supreme court of the state of New York, in and for the city and county of New York, wherein Oliver E. Wood, Israel A. Barker, and John Maxwell are plaintiffs, and Henry Jacoby and another are defendants, it be referred to Joseph Gutman, Jr., Esquire, a commissioner of the circuit court of the United States for the Southern district of New York, as a referee, to take and certify evidence upon the question as to whether or not the said action is founded on a debt or claim created by the fraud or embezzlement of the said bankrupt or by his defalcation as a public officer, or while acting. In any fiduciary character, and to report thereon with all convenient speed. And it is further ordered that in the action in the supreme court of the state of New York in and for the city and county of New York, wherein Solomon

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Mannes is plaintiff, and Henry Jacoby and another are defendants, it be referred to the said Gutman, as a referee to take and certify evidence upon the question as to whether or not the said action is founded on a debt or claim created by the fraud or embezzlement of the said bankrupt, or by his defalcation as a public officer, or while acting in any fiduciary character, and to report thereon with all convenient speed. And it is further ordered that all parties shall have due previous notice of all proceedings before said referee hereunder, and the opportunity of attending before him, and shall be at liberty to examine the said bankrupt and any other witnesses in the premises, and that all further proceedings in the said last named two actions, except such as relate exclusively to the holding of the said Jacoby in custody under the said orders of arrest therein, be and the same are hereby stayed to await the determination of this court in bankruptcy on the question of the discharge of said Jacoby.

² [Reprinted from 1 N. B. R. 118, by permission.]