

Case No. 8,718. MCCORMICK V. BUCKNER ET AL.
[2 Wkly. Notes Cas. 480.]

District Court, E. D. Pennsylvania.

June 16, 1875.

BILL TO RESTRAIN SHERIFF'S SALE—ACT OF BANKRUPTCY.

This was a bill in equity by Sharpe's assignee to set aside executions at the suit of Buckner, and to restrain the sheriff [Elliott] from making sales, on the ground that Buckner had within the meaning of the bankrupt act [of 1867 (14 Stat 517)] procured Sharpe's property to be taken on legal process, etc. The executions were issued upon judgments entered by confession on warrants of attorney accompanying bonds, the bonds being given under the following circumstances: Sharpe, the bankrupt, being unable to go on for want of capital, got loans of money from Buckner from time to time, for which he gave the bonds and warrants in question, which, with interest and extra interest of several years, amounted to the sum for which the executions issued. When the first of the loans was made, an agreement was executed between Sharpe and his own son of the one part and Buckner's son of the other part, by which Sharpe agreed to employ the two sons in his factory, paying them each a fixed salary, and as additional compensation giving each a certain percentage of the net profits. This agreement was renewed from year to year, and was in operation when the execution was issued. Buckner's son was bookkeeper, and it was shown that balance sheets had been given from time to time by the son to the father, which showed Sharpe's financial condition.

E. Spencer Miller, for plaintiff, relied on these facts to distinguish the case from those cited by the defendant, arguing that Sharpe had put himself in Buckner's power by owing him all the time more than he was worth, and by giving a bond and warrant by which Buckner might in a moment break him up, and also that in so doing he enabled Buckner, through his son, to inform himself at any time of the condition of the business.

T. Hart, Jr., for defendants, cited: *Wilson v. City Bank of St. Paul* [17 Wall. (84 U. S.) 473]; *Tiffany v. Boatmen's Savings Ins. Co.* [18 Wall. (85 U. S.) 375]; *In re King* [Case No. 7,783]; *Sleek v. Turner*, 10 N. B. R. 580; *Piper v. Baldy* [Case No. 11,179]; *Clark v. Iselin* [21 Wall. (88 U. S.) 360].

THE COURT held that the case of *Clark v. Iselin* ruled this, and, the testimony relied on not warranting a different decision, bill dismissed with costs.