Case No. 11,550.

EX PARTE RANDALL ET AL.

{5 Law Rep. 115; 1 Pa. Law J. 133; 1 N. Y. Leg. Obs. 199.}

Circuit Court, E. D. Massachusetts. June, 1842.

BANKRUPTCY—VOLUNTARY PETITION—APPLICATION TO WITHDRAW.

1. A voluntary petition for a decree of bankruptcy may be withdrawn, and all further proceedings stayed, on the application of the petitioner, before the decree has been made, upon proper cause shown, and the payment of costs.

{Cited in brief in Dudley's Case, Case No. 4,114. Cited in Ex parte Harris, Id. 6,110.}

2. Whether a petition can be dismissed and further proceedings stayed, after a decree of bankruptcy, quaere.

This was a petition in bankruptcy, by Benjamin Randall and Timothy Reed, of Boston, traders and copartners. The petition stated in substance, that on the second day of March, 1842, one of the petitioners, Randall, presented to the judge of the district court, a petition that the said Randall, and the aforesaid copartnership, might be declared bankrupt, and be entitled to the benefit of the bankrupt act; that Timothy Reed, the other petitioner, then being dangerously sick, was entirely ignorant of said proceedings, and did not join; that since the filing of the said petition, the petitioners had entered into a composition, compromise and settlement with all their joint and separate creditors, and were desirous of proceeding no farther under their aforesaid petition; to which course the creditors consented. Wherefore the petitioners prayed, that all proceedings under their aforesaid petition might be stayed, and that the same might be dismissed. Upon the hearing and proofs offered in the district court, it was ordered, "that the question whether upon the facts set forth in the said petition, the petitioners can and ought to be permitted

to discontinue proceedings under their original petition and to withdraw the same, or what relief shall be granted, be adjourned into the circuit court of the United States for this district, to be heard and determined by the court."

The cause now came on for argument in the circuit court, and was submitted to the court by Rand & Fiske for petitioners; there being no opposition on the part of the creditors.

STORY, Circuit Justice. I have no doubt whatsoever in this case, that the prayer of the petitioners may and ought to be granted; and that all further proceedings should be stayed, and the petition dismissed, upon the payment of all the costs, hitherto incurred touching the same, and now remaining unpaid. The application is made before any decree has been passed in bankruptcy, declaring the petitioners, or either of them, to be bankrupts, and giving them the benefit of the act of congress. If the application had been made after such a decree, it might have involved other considerations; for the effect of such a decree would be to devest out of the bankrupt all his property and rights of property from that time, and to vest the same in the assignee in bankruptcy, immediately upon his appointment I do not mean to say, that it might not even then be competent for the court, upon proper proceedings, upon the application of all parties—the bankrupt, the assignee, and all the creditors—to direct a stay of all further proceedings. That is a point, which need not be considered upon the present occasion; for here the petition has been filed by the voluntary act of the petitioner, (Randall), and there has been no proceeding in invitum by any of the creditors; and no rights have as yet positively attached in their favor, which the court is bound to enforce in bankruptcy. It does not occur to my mind, therefore, that there is any sound 222 legal objection to stay all further proceedings upon this petition, and to

dismiss the same. It is in the nature of a supersedeas; and the grant of that is ordinarily a matter of sound discretion in the court sitting in bankruptcy. It is by no means, an uncommon function for the lord chancellor, sitting in bankruptcy, to award a writ of supersedeas to supersede the proceedings on the commission, however rightfully it may have been issued, upon the application of the bankrupt, after he has been decreed a bankrupt, with the consent, not of all his creditors, but merely of all his creditors who have proved their debts. It is not, indeed, a matter of strict right; and the lord chancellor may, and often does, refuse to supersede it in such a case, where opposition is made thereto by other creditors, or it might produce injustice. Ex parte King, 2 Ves. Jr. 40; Ex parte Stokes, 7 Ves. 408; Ex parte Duckworth, 16 Ves. 416; Ex parte Jackson, 8 Ves. 533; Ex parte Milner, 19 Ves. 204; Ex parte Law, 4 Madd. 273,—sufficiently show the general practice and the limitations and qualifications thereof. See, also, 1 Deac. Bankr. Prac. pp. 808–833, c. 20, §§ 1–4; Archb. Bankr. (by Plather, Ed. 1842) p. 336. a decree in bankruptcy being in legal contemplation an execution for the benefit of all the creditors, the court will take care, that it shall not be superseded without good cause, and, where it is valid, not generally without the consent of all the creditors. Ex parte Stokes, 7 Ves. 408.

In the present case, I understand, that all the creditors, who are known to be such, concur in this application. They have made a compromise and composition of their debts; and there is, therefore, no longer any ground to retain the petition; for the court cannot presume, that any other creditors exist, or that any possible injury can occur from a dismissal of the petition. The proper course is to stay all further proceedings, and to dismiss the petition, as I have already intimated, upon the payment of costs. I shall

direct a certificate to be sent to the district court accordingly.