

IN RE SABIN.

{12 N. B. R. 142; 1 N. Y. Wkly. Dig. 101.}¹

District Court, E. D. Michigan.

1875.

BANKRUPTCY—INCOMPLETE LIEN—STATE
STATUTE.

A lien, authorized by a statute, on compliance with certain provisions concerning record and notice, is not complete until the statutory requisites are complied with; and if these are postponed until after the filing of a petition in bankruptcy, on which an adjudication follows, no lien will exist.

{For prior proceedings in this litigation, see Case No. 12,193.}

By HOVEY K. CLARKE, Register:

The register certifies—that on the 16th day of June, 1874, Johnson & Hunt tendered a deposition of Benjamin G. Johnson, one of the firm, as proof of debt due to them against the above named bankrupt's estate, and which they claimed was secured, by virtue of the statutes of the state of Michigan, by a mechanic's lien upon certain described premises belonging to said estate. The act under which the lien is claimed, after specifying the parties who may "have a lien," and the subjects to which and the conditions upon which it shall apply, declares (new compilation, section 6790) "such lien shall not attach, unless the said contractor or some one on his behalf shall make and file with the register of deeds of the county in which the lands shall lie a certificate containing a copy of the contract," etc., directing the particulars which the certificate must show, the manner of verification and recording it, to which is added a proviso "that no lien created by virtue of this act shall be binding upon the owner, part-owner, or lessee, until he shall have been notified of the filing of such lien with the register of deeds."

The proceedings under which the adjudication in bankruptcy in this case was had were commenced on the 20th day of October, 1873, at which time, as I understand the effect of the bankrupt act [of 1867 (14 Stat. 517)], and the ruling of this court, the title of the bankrupt to the premises on which the lien is claimed had passed to the assignee in bankruptcy. The proceedings to “attach” the lien under the statutes of Michigan were not commenced until the 23d day of October.

I am not referred to any fact, nor to any principle of law, which will subject the title acquired by the assignee to the lien claimed by the creditors in this case, and having declined to file the proof as a secured claim, I am requested by the claimants to certify the questions arising into court for determination by the district judge. I send herewith the proof of debt offered by the claimants.

LONGYEAR, District Judge. The foregoing conclusions and action of the register are approved.

{For subsequent proceedings in this litigation, see Case No. 12,195.}

¹ [Reprinted from 12 N. B. R. 142, by permission. 1 N. Y. Wkly. Dig. 101, contains only a partial report.]

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