

IN RE SCHEPELER ET AL.

[4 Ben. 68.]¹

District Court, S. D. New York.

Feb., 1870.

BANKRUPTCY—RESTRAINING
SUIT—PARTIES.

FOREIGN

The firm of Bunger, Burlage & Co., composed of partners resident here and one partner resident abroad, had proved a debt in bankruptcy against Schepeler & Co. After the dissolution of Bunger, Burlage & Co., the foreign partner took proceedings abroad, in the name of the firm, to collect the debt, by attaching a claim which Schepeler & Co. had against Lippman & Rosenthal, of Amsterdam, Holland. The assignee in the proceeding against Schepeler & Co. applied to the bankruptcy court, to restrain the foreign proceedings. *Held*, that Bunger, Burlage & Co. were parties to the bankruptcy proceedings, and that the members of the firm residing here should be restrained from prosecuting the proceedings abroad.

[Cited in *Scott v. Ellery*, 142 U. S. 381, 12 Sup. Ct. 234.]

[In the matter of John F. Schepeler, John D. Schepeler, and Leon Rosenplaenter, involuntary bankrupts.]

This was a motion on behalf of William von Sachs, assignee, to restrain certain creditors from prosecuting an action in Holland. The adjudication of bankruptcy was made in June, 1869, and among the debts proved against the estate was one by the firm of Bunger, Burlage & Co., which, on December 31st, 1869, was dissolved. Among the assets, which passed into the hands of the assignee, was a claim against the firm of Lippman & Rosenthal, of Amsterdam, in Holland, which was in litigation in the courts there, but on which judgment had not been recovered. Mr. Bunger, who resided at Cologne, in Prussia, after the dissolution of the firm here, took proceedings in Amsterdam, in the name of the firm, to recover the

claim, and attached the claim against Lippman & Rosenthal. The assignee in bankruptcy, on a petition showing these facts, made a motion, on notice to the members of the firm of Bunger, Burlage & Co. who were here, that the firm be restrained from the further prosecution of their attachment proceedings, and be directed to relinquish them, so that the assignee could recover the claim against Lippman & Rosenthal, and that it might be distributed as part of the assets. The objection was taken, in opposition, that, the debt being located in Holland, and the proceedings pending there, this court had no jurisdiction to grant the relief asked, and that the effect of the dissolution of Bunger, Burlage & Co. was to vest in each of its members a specific share of the claim against the bankrupt's estate, and that Bunger, owning a separate share, was entitled to take measures to secure it, by attaching the Lippman claim, it being less than his share of the debt against the bankrupt's estate, which amounted to \$50,000, gold, while the Lippman claim was only \$12,000.

[For prior proceeding in this litigation, see Case No. 12,452.]

T. C. T. Buckley and J. K. Hill, for the assignee.

A. Mathews, for the creditors.

THE COURT (BLATCHFORD, District Judge) held that, as the firm of Bunger, Burlage & Co. had proved their debt in the bankruptcy case, they were thereby made parties to the proceedings, and, under section 21 of the act [of 1867 (14 Stat 526)], the members resident here should be restrained from the further prosecution of their proceedings in Holland.

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