

IN RE TALLMADGE.

[Betts' Scr. Bk. 109.]

District Court, S. D. New York.

Dec, 1842.

BANKRUPTCY PROCEEDINGS—PARTIES.

[The stockholders, of a creditor bank are not parties in interest, so as to be entitled to object to a decree.]

[In the matter of David B. Tallmadge, a bankrupt.]

Objections were interposed to a decree by the stockholders of the North American Trust & Banking Company, and the petitioner objects to such objections being received, on the ground that the stockholders of a creditor bank are not persons in interest.

BETTS, District Judge, said: The court has on several occasions been called upon to consider the effect of the clause "others in interest" used in the bankrupt act, and determine whether particular classes of persons were comprehended within it, and has held that it is of broader signification than the term "creditors." It has never, however, been understood to reach beyond interests, then in esse, which, without change of parties, or their relationship to each other, might arise and be recognized in law as entitled to a remedy and protection in the courts. Imaginary and merely possible cases cannot be regarded as contemplated or provided for in that phrase. For instance, the legal heirs of a creditor, during his life, could not be recognized as persons in interest, because of the possibility of a failure of a future right to the debt. It must relate to those rights actually existing which may afford the basis of a remedy by course of law, without the accession of any additional title or authorization,—such as the right of cestuis que trustent to a debt made payable to a trustee or agent of heirs at law, and claims represented by executors, administrators, etc. The debt due a bank is due to

the corporate person absolutely, and can only be represented or claimed by such corporation. There is no authority, express or implied, with the individual stockholders, and no power in them to act with respect to the debt, otherwise than through their corporate representation. Such individuals cannot, accordingly, be allowed to interpose and contest a bankrupt's proceedings, because of that corporate debt.

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