

IN RE BEAR AND OTHERS, BANKRUPTS.

District Court, S. D. New York. July 14, 1881.

1. VESTED RIGHTS.

One cannot be deprived of vested rights without his consent.

In Bankruptcy. Petition of Jones.

BROWN, D. J. The affidavits on the part of the petitioner show that the filing of the claim as an unsecured debt was not legally the act of Jones. Neither he nor Porter, his attorney, ever authorized or assented to it. Porter held it to be used provisionally only, and forbade its being filed. The preparation of the secured claim, and Brainsby's affidavit of preparation for petition shortly after, confirm this view. Jones' lien under the levy was a vested right of property of which he cannot be deprived except by his own consent or that of his duly-authorized agent. The case is stronger than that of filing under mistake or misapprehension of fact or law, where an amendment is usually allowed. The motion must therefore be granted, but only upon the payment of the costs of this motion, for the trouble occasioned by the evident laches and repeated applications.

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