

uses without just compensation. Is it to be argued, therefore, that private property can be taken for private uses, either with or without just compensation? The supreme court of the United States stated the elemental thought underlying American constitutional law when it declared that an attempt, through the guise of the taxing power, to take one man's property for the private benefit of another is void, an act of spoliation, and not a lawful use of legislative or municipal functions.

There have been so many well-considered cases in the United States courts and in the state courts on this subject that it would be a work of supererogation to repeat their arguments. It must suffice that the weight of authority and sound reason concur in holding bonds and coupons like those in question void *ab initio*. *Loan Ass'n v. Topeka*, 20 Wall. 665; *Com. Bank v. City of Iola*, 2 Dill. 353; *Parkersburg v. Brown*, 106 U. S. 487; S. C. 1 Sup. Ct. Rep. 442; *Allen v. Jay*, 12 (U. S.) Amer. Law Reg. 481, with notes; *State v. Curators State Univ.* 57 Mo. 178; *St. Louis Co. Ct. v. Griswold*, 58 Mo. 175; *Livingston Co. v. Darlington*, 101 U. S. 407.

In *Cooley*, Const. Lim. the subject is fully discussed, cases reviewed, and conclusions stated. Page 264 *et seq.*

Demurrers overruled.

In re LETCHWORTH and others, Bankrupts.

(District Court, N. D. New York. March, 1884.)

BANKRUPTCY—RENEWAL NOTE EXECUTED AFTER BANKRUPTCY.

Where a party previous to becoming a bankrupt was liable on a bond, by the terms of which he became a continuing guarantor of notes discounted by a certain bank for a company of which he was the president, and at the time of his bankruptcy the bank held a note so discounted, indorsed by him, the fact that a renewal note was given after the filing of his petition, will not prevent the debt from being proved as a claim against his estate.

In Bankruptcy.

Charles F. Durston, for assignee.

Theo. M. Pomeroy, for creditors.

COXE, J. At the time of the commencement of the proceedings in bankruptcy herein, William H. Seward, Jr., & Co., bankers, held the bond of the above-named bankrupt, by the terms of which he became a continuing guarantor for the payment of any notes which the said firm might discount, for a manufacturing company of which he was president. Demand and notice of non-payment were waived. When the petition was filed the manufacturing company was indebted to Seward & Co. in the sum of \$2,500, for which they held the company's note indorsed by the bankrupt. This note was renewed from

time to time, the last renewal being after the adjudication in bankruptcy. The assignee insists that for this reason the debt is not provable. It is thought, however, that under the peculiar phraseology of the bond and in view of the obligation there created, it would be unjust to treat the liability of the bankrupt as that of an indorser simply. At the time of the bankruptcy he was clearly liable on the bond in the event of the failure of the makers of the note to pay. True, his liability had not then become absolute, but the debt existed and the obligation was created before the petition was filed. Legally and equitably the estate is bound by his contract.

The report of the register is confirmed and the proof permitted to remain on file.

In re MERRELL and others, Bankrupts.

(District Court, N. D. New York. March, 1884.)

BANKRUPTCY—DEBTS CONTRACTED BY BANKRUPT AFTER PROCEEDINGS COMMENCED.

A debt contracted by a bankrupt subsequently to the commencement of proceedings against him cannot be proved in bankruptcy.

This is an appeal from a decision of the register sustaining certain proofs of debt. The petition in bankruptcy was filed November 13, 1873. On the twenty-sixth of the same month the bankrupts contracted the indebtedness in question. The adjudication was dated February 27, 1874. The proofs of debt were made February 13, 1875. The creditors contend that their proofs should stand, for the reason that the indebtedness upon which they are founded was due and payable at the time of the adjudication. The assignee insists that they should be expunged because the indebtedness was contracted subsequently to the proceedings in bankruptcy.

Charles F. Durston, for assignee.

Theodore M. Pomeroy, for creditors.

COXE, J. Section 5067 of the Revised Statutes provides: "That all debts due and payable from the bankrupt at the time of the commencement of the proceedings in bankruptcy * * * may be proved against the estate of the bankrupt." The proceedings are commenced (section 4991) when the petition is filed. These provisions were in force at the time the proofs in this matter were presented to the register. The indebtedness upon which the proofs are founded was not contracted until 13 days after the proceedings were commenced. The conclusion follows, therefore, that the proofs should not be permitted to stand. Even before the Revised Statutes, and before the substitution of the words "commencement of proceedings in bankruptcy" for the words "adjudication of bankruptcy" in section 19 of