

varying laws of the several states in regard to priority of payment of debts would not impair or destroy the uniformity of the system of bankruptcy authorized by the constitution. We do not find occasion now to consider that subject. The question recurs, what was the real intention of the congress as expressed in clauses 4 and 5 of section 64b? In the first clause congress addresses itself to the subject of labor claims, and particularly provides that all wages that have been earned within three months before the date of the commencement of proceedings in bankruptcy, not to exceed \$300 to each claimant, shall be awarded priority of payment. It recognized, it must be assumed, the various provisions of law in the several states with respect to this subject. It found them not to be in harmony, and in some states—as, notably, Illinois—the laws upon that subject not to be consistent with each other. It found limitation as to time different in the different states. It found that in some of the states priority of payment was unlimited as to amount, and in some limited to so small a sum as \$50. With this divergence within its knowledge, the congress spoke to the subject specially and particularly, and limited the amount to \$300, and, as to time, to wages earned within three months before the commencement of proceedings. Can, then, the general provision of the law following immediately thereafter, allowing priority of payment for all debts owing to any person who, by the laws of the states or the United States, is entitled to priority, be held to enlarge the prior provision so that the statute should be read that, in any event, the laborer should be entitled to priority of payment in respect of wages earned within three months prior to proceedings, and in amount not exceeding \$300, and that wherever the laws of the state of the residence of the bankrupt grant the laborer priority of payment without limit as to time or amount, or impose a limit in excess of that imposed by the bankrupt act, he shall be entitled to a further priority in payment according to the law of the particular state? We think not. It is not to be supposed—unless the language of the act clearly so speaks—that the congress intended that in the administration of the act there should be a marked contrariety in the priority of payment of labor claims dependent upon locality. It is an elementary principle of construction that where there are in one act or in several acts contemporaneously passed specific provisions relating to a particular subject, they will govern in respect to that subject as against general provisions contained in the same act. See *Suth. St. Const.* § 158. Thus, in *State v. Inhabitants of Trenton*, 38 N. J. Law, 67, it is said: “When the intention of the lawgiver, which is to be sought after in the interpretation of a statute, is specifically declared in a prior section as to a particular matter, it must prevail over a subsequent clause in general terms; which might, by construction, conflict with it. The legislature must be presumed to have intended what it expressly stated, rather than that which might be inferred from the use of general terms.” And so, in *Taylor v. Corporation of Oldham*, 4 Ch. Div. 398, it is declared that general provisions in an act of parliament do not override special provisions. So that, where an act contains special provisions as to particular property, they must be read as exceptions to the general provision, whether contained in the same or any other

act. And so, also, it was held in *Attorney General v. Lamplough*, 3 Exch. Div. 214, that where special words are followed by general words in any statute any subject-matter which is aptly described by the special words comes within the purview of the statute by force of the special words, and not of the general words. *Dwar. St. p. 658*, thus states the rule:

"Where a general intention is expressed, and the act also expresses a particular intention incompatible with the general intention, the particular intention is to be considered in the nature of an exception; while, if a particular thing is given out or limited in the preceding parts of the statute, this shall not be taken away or altered by any subsequent general words of the same statute."

In *Felt v. Felt*, 19 Wis. 193, Mr. Justice Paine states the rule thus:

"But it is a well-settled rule of construction that specific provisions relating to a particular subject must govern, in respect to that subject, as against general provisions in other parts of the law, which might otherwise be broad enough to include it."

In *State v. Goetze*, 22 Wis. 363, 365, the same learned judge said:

"There is no rule of construction more reasonable and none better settled than that special provisions of a statute in regard to a particular subject will prevail over general provisions in the same or other statutes, so far as there is a conflict."

See, also, *Hoey v. Gilroy*, 129 N. Y. 138, 29 N. E. 85; *Stockett v. Bird's Adm'r*, 18 Md. 484.

Our conclusion is that congress having spoken specifically to the subject of priority of payment of labor claims, what it has said upon that subject expresses the particular intent of the lawmaking power, and that provision is not to be tolled or enlarged by any general prior or subsequent provision in that act. That which is given in particular is not affected by general words. So that the statute providing for the priority of payment of debts referred to in clause 5 must be construed to mean other debts and different debts than those specified in clause 4. We are not unmindful of the particular hardship which our conclusion, it is said, will work out here. It arises from the fact that under the law proceedings in bankruptcy, except by voluntary act of the bankrupt, could not be commenced in time to fully protect these labor claimants. We regret that this is so. It is a misfortune arising from the provisions of the act, but to remedy this particular wrong we cannot override a recognized canon of construction of statute law.

The prayer of this petition must be allowed, and the order of the district court of the United States for the Northern district of Illinois, sitting in bankruptcy, bearing date November 11, 1898, so far as it allows priority of payment to labor claims which accrued prior to the 1st day of August, 1898, must be set aside, and held for naught. The clerk will certify this ruling to the district court of the United States for the Northern district of Illinois.

It is proper to add that Judge SHOWALTER sat at the hearing of this cause, but died before its decision.

## BRAY et al. v. COBB.

(District Court, E. D. North Carolina. December 30, 1898.)

**1. BANKRUPTCY—REFEREES—DISQUALIFICATION BY INTEREST.**

Under Bankruptcy Act 1898, § 39, providing that "referees shall not act in cases in which they are directly or indirectly interested," a referee is not disqualified by interest from acting in a particular case because he owes a debt to the bankrupt. The interest which will disqualify is an interest either in the proceedings in bankruptcy or in the estate of the bankrupt. But the judge, on being apprised of the fact that the referee is a debtor of the bankrupt, may, in his discretion, revoke the order of reference, and send the case to another referee.

**2. SAME—APPOINTMENT OF SPECIAL REFEREE.**

Under Bankruptcy Act 1898, § 43, when the referee to whom a case in bankruptcy would regularly be referred is absent or disqualified, the judge may appoint a special referee, and refer the case to him. This may be done before the answer of the alleged bankrupt is filed, and does not require the consent or approval of the respondent or his attorney.

**3. SAME—ORDER OF REFERENCE—DEPUTY CLERK.**

A deputy clerk of a court of bankruptcy has no authority to refer a petition in bankruptcy to the referee. An order of reference may be made by the clerk, but only in case the judge is absent from the district, or from the division of the district, where the petition is filed.

**4. SAME.**

An order of reference, made by the judge and attested by the deputy clerk, is valid.

**5. SAME—ACTS OF BANKRUPTCY—ASSIGNMENT FOR CREDITORS.**

Under Bankruptcy Act 1898, § 3, declaring that it shall be an act of bankruptcy if a person shall have "made a general assignment for the benefit of his creditors," the making of such an assignment is an act of bankruptcy per se, without reference to the debtor's solvency or insolvency at the time.

**6. SAME—CONTROVERTING ALLEGATION OF INSOLVENCY.**

Under Bankruptcy Act 1898, § 3, subsec. d, providing that when a person against whom an involuntary petition in bankruptcy is filed takes issue with and denies the allegation of his insolvency, it shall be his duty to appear in court on the hearing with his books, papers, and accounts, and submit to an examination, and that his failure to do so shall impose upon him the burden of proving his solvency, a simple denial of the fact of insolvency in the answer by an alleged bankrupt (who had previously assigned all his property for the benefit of creditors), unaccompanied by any affidavits, schedules, or other evidence, does not raise such an issue of solvency as is contemplated by the act, nor sustain the burden of proof.

**7. SAME—DEMAND FOR JURY TRIAL—WAIVER.**

In a case of involuntary bankruptcy, a demand for a trial by jury, as to the commission of the acts of bankruptcy alleged and the fact of insolvency, must be made by the debtor at or before the expiration of the time allowed for an answer,—10 days after the return day of the subpoena,—unless the time is extended by the court; if not demanded until 7 days later, trial by jury will be deemed to have been waived.

**8. SAME—DISQUALIFICATION OF CLERK—TRANSFER OF CAUSE.**

Relationship between the bankrupt and the deputy clerk of the district court in whose office the petition was filed will be cause for transferring the case to another seat of the court in the same district and division, and ordering the record to be filed and docketed in the office of the clerk of the court at the latter place.

In Bankruptcy.

E. F. Aydtlett, for plaintiffs.

T. G. Skinner and G. W. Ward, for defendant.