

pose of congress to secure to bankrupts the exemption provided for by the laws of the state in which they reside, but this general purpose is limited by the subsequent clause of section 70, which declares the rule to be applied with respect to a named and particular kind of property, to wit, policies of insurance having a surrender value payable to the bankrupt or his estate. The fact that this special clause is preceded by the word "provided" does not, in any proper sense, limit the force thereof. Thus, in *Banking Co. v. Smith*, 128 U. S. 174, 9 Sup. Ct. 47, it is said: "It is a common practice in legislative proceedings, on the consideration of bills for parties desirous of securing amendments to them, to precede their proposed amendments with the term 'Provided,' so as to declare that, notwithstanding existing provisions, the one thus expressed is to prevail; thus having no greater significance than would be attached to the word 'but' or 'and' in the same place, and simply serving to separate or distinguish the different paragraphs or sentences." Giving to the words used in section 70 their usual and fair import, they clearly declare that policies of insurance of the character of that in issue in this case pass to the trustee as part of the assets of the bankrupt, and, as these words deal with a specific matter, they must be construed to be a limitation upon the general declaration with respect to exemptions found in section 6, and I therefore hold that the endowment policy in question forms part of the assets of the estate of the bankrupt, and the title thereto will vest in the trustee, unless the bankrupt within 30 days exercises the right secured to him of paying or securing to the trustee the surrender value of the policy. It is therefore ordered that notice of the ruling of the court be forthwith given by the clerk to the referee and to the bankrupt for their guidance in the premises.

In re ROCKWOOD.

(District Court, N. D. Iowa, Cedar Rapids Division. January 11, 1899.)

BANKRUPTCY—SEIZURE OF PROPERTY—POSSESSION OF CHATTEL MORTGAGEE.

Bankruptcy Act 1898, § 69, empowering the judge of the court of bankruptcy, on proof that the respondent in an involuntary petition has committed an act of bankruptcy, or is neglecting his property and suffering it to deteriorate, to issue a warrant to the marshal to seize and hold such property subject to further orders, does not authorize a warrant to the marshal, in advance of any adjudication on the petition, to seize goods in the hands of a stranger to the proceedings, who took possession before the filing of the petition, and claims title, under a chattel mortgage from the alleged bankrupt.

In Bankruptcy. Application by creditors of the alleged bankrupt for an order directing the marshal to seize certain property in the possession of a third person.

Hayes & Schuyler, for creditors.

SHIRAS, District Judge. In this matter certain creditors of Charles Rockwood have filed a petition praying that he may be adjudged to be a bankrupt, and now apply to the court for an order directing the

marshal to seize and take into his possession certain personal property which it is averred belonged to the alleged bankrupt, but which he conveyed to one Mary Bocker by the execution of a chattel mortgage dated January 3, 1899, and under which the mortgagee took possession of the property. The application is based upon the provisions of section 69 of the bankrupt act, which enacts that the judge upon satisfactory proof being made that a bankrupt against whom an involuntary petition has been filed has committed an act of bankruptcy, or is neglecting his property, or permitting same to deteriorate, may issue a warrant to the marshal to seize and hold the property until further order of the court. As I construe this section, it does not authorize the court to issue a warrant to the marshal to take property away from the possession of a third party who holds it under a claim of right or title. According to the showing made in the application, the mortgagee has a good title to, and the right of possession of, the property in question, unless such title and right are defeated under the provisions of the bankrupt act. Whether these provisions will become operative against the title and right of the mortgagee depends primarily upon the question whether Rockwood will be adjudicated to be a bankrupt on the petition of his creditors, which is set down for hearing at a future day. The mortgagee, Mary Bocker, is not a party to these proceedings; and, in my judgment, section 69 does not confer any authority on the court to arbitrarily deprive her of the possession of the property held by her under claim of title. It cannot be judicially known at the present time whether Rockwood will or will not be adjudged a bankrupt, and, unless he is so adjudged, there is no ground shown for attacking the possession of the property now held by the mortgagee.

Section 69 is intended to authorize the court to prevent the wastage, deterioration, or loss of the bankrupt's property in his possession, pending the hearing on the petition for adjudication, but it is not intended to authorize the taking away from third parties property to which they assert title. The section provides that before the issuance of a warrant of seizure a bond must be executed conditioned to indemnify the bankrupt for such damages as he may sustain if the seizure be wrongfully obtained; it being further provided that the property seized shall be released, if the bankrupt give bond conditioned to turn over the property or its value to the trustee in case he is adjudged a bankrupt. These provisions clearly show that the section is intended to apply only to seizures of property in the possession of the bankrupt, and it does not authorize the seizure of property which has passed from the possession of the bankrupt before the institution of proceedings under the act. In a proper case an injunction or restraining order may be obtained, upon an application to which the third person is made a party, restraining the sale or other disposition of the property until the hearing upon the petition for adjudication, and the appointment of the trustee, but the proper showing therefor must be made. The present application for a warrant directing the marshal to seize property in the possession of the mortgagee must be refused, for the reasons stated.

BURNETT v. MORRIS MERCANTILE CO. et al.

(District Court, D. Oregon. January 9, 1899.)

No. 4,367.

BANKRUPTCY—JURISDICTION OF ACTIONS BY TRUSTEE.

Under Bankruptcy Act 1898, § 23, providing that suits by a trustee in bankruptcy shall be brought or prosecuted only in those courts where the bankrupt might have brought or prosecuted them if proceedings in bankruptcy had not been instituted, a court of bankruptcy has no jurisdiction of an action by such trustee to set aside an alleged fraudulent conveyance made by the bankrupt to a defendant who is a citizen of the same state with the bankrupt and the trustee.

George W. P. Joseph, for plaintiff.

W. M. Ramsey, for defendants.

BELLINGER, District Judge. This is a proceeding by a trustee in bankruptcy to set aside certain conveyances made by the bankrupt in fraud, as it is claimed, of his creditors. The defendants demur to the complaint upon the ground that this court is without jurisdiction, the controversy being one between citizens of the same state.

Section 23 of the bankrupt act provides:

"The United States circuit courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings in bankruptcy, between trustees as such and adverse claimants concerning the property acquired or claimed by the trustees, in the same manner and to the same extent only as though bankruptcy proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants. Suits by the trustee shall only be brought or prosecuted in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant."

It is clear that congress intended that the jurisdiction to set aside conveyances as made in fraud of creditors should not be enlarged by operation of the bankrupt act; that the jurisdiction in these cases should be determined with reference to the law as it then was. Any construction in favor of the jurisdiction of the district court of the United States based upon provisions of the law of general application is in conflict with the section quoted. It is argued that because the bankrupt cannot maintain a suit to set aside a conveyance, as fraudulent, made by himself, therefore the provision quoted does not apply in a case like this. But this is a question of jurisdiction,—a question of the right to determine, not of the principles to obtain in reaching a determination. If the bankrupt himself brought the suit, he could not be turned out of court on the question of jurisdiction. The authority of the court to decide as to his rights would be unquestioned, although he might be precluded in his right to relief by his own act. The statute intends to keep all controversies as to the validity of conveyances like these where they would have been if the bankrupt act had not been passed. The question of the validity of these conveyances is the vital question. That question, in the absence of the bankruptcy act, must necessarily be determined, in any proceeding brought therefor, by the courts of the state, unless the case involves the requisite