

## In re REICHMAN.

(District Court, E. D. Missouri, E. D. February 17, 1899.)

**BANKRUPTCY—ACTS OF BANKRUPTCY—SUFFERING ATTACHMENT.**

Under Bankruptcy Act 1898, § 3, an insolvent debtor commits an act of bankruptcy by suffering or permitting a creditor to obtain a preference through legal proceedings, if he fails to discharge an attachment levied by such creditor on his stock of goods, and allows a sale to be made thereunder. It is not necessary that the debtor should procure, or actively participate in, the bringing of the attachment suit.

**In Bankruptcy.**

Huff & Garesche, for creditors.  
T. J. Rowe, for bankrupt.

ADAMS, District Judge (orally). The act of bankruptcy charged in this case is that the bankrupt suffered and permitted, while insolvent, a creditor to obtain a preference through legal proceedings, and did not, at least five days before a sale of the property affected by such preference, vacate or discharge the same. The petition details the proceedings, by which the bankrupt so suffered and permitted the creditor to secure such preference, to have been as follows: That one Horton duly sued out two writs of attachment against the bankrupt; that the same were executed by the seizure of a stock of goods of the bankrupt; that said stock of goods was afterwards, pursuant to an order of sale duly made, sold; and that the bankrupt did not, within five days before such sale, vacate or discharge the preference. Upon the return of the subpoena in this case, duly served, the bankrupt appears here, and, in his answer filed, admits the facts as stated in the petition, namely, the suing out of the writs of attachment by Horton, and the other proceedings already stated, but says, "He denies that he suffered or permitted said Horton, through legal proceedings, to obtain a preference over other creditors."

The petitioning creditors move for judgment on the pleadings adjudicating the debtor a bankrupt. This motion presents the question sharply whether or not the actual participation by a debtor in securing or bringing about an attachment suit against himself is necessary in order to constitute an act of bankruptcy, under the provisions of section 3 of the act approved July 1, 1898. Subdivision 3 of this section reads as follows:

"Acts of bankruptcy by a person shall consist of his having \* \* \* suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having at least five days before a sale or final disposition of any property affected by such preference vacated or discharged such preference," etc.

This language, in its ordinary and natural meaning, does not seem to contemplate any actual participation or agency of the debtor. He suffers or permits the act to be done if he allows it to be done. He suffers or permits it to be done if he so conducts his business that a creditor has a cause for attachment, and actually attaches. The act provides a method of escape from the consequences of an unjust attachment by the provision which allows an attached debtor to discharge or

vacate the attachment within five days before a sale or final disposition of the property seized. Unless the debtor avails himself of this remedy, the act of bankruptcy appears to me to be complete. The pleadings in this case show that the debtor failed to do so, and, on the contrary, allowed the attached property to be sold under the attachment proceedings, and that the debtor was insolvent. It is my opinion that the debtor thereby committed an act of bankruptcy, whether or not he actively participated in the institution of the attachment suits. A judgment will therefore be entered adjudicating the debtor a bankrupt.

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In re BATES MACH. CO.

(District Court, D. Massachusetts. January 28, 1899.)

No. 377.

**1. BANKRUPTCY—ACTS OF BANKRUPTCY BY CORPORATION — AUTHORITY OF DIRECTORS.**

Under the laws of Massachusetts defining and limiting the powers of the officers and directors of manufacturing corporations, a written admission, by the directors of such a corporation, that the company is unable to pay its debts, and is willing to be adjudged a bankrupt on that ground, is in excess of their authority, and therefore does not constitute an act of bankruptcy by the corporation on which involuntary proceedings against it may be founded.

**2. SAME—RATIFICATION BY STOCKHOLDERS.**

Where the directors of a corporation, exceeding their statutory authority, make a written admission of its insolvency, and of its willingness to be adjudged a bankrupt on that ground, and thereupon a petition in bankruptcy against it is filed by three creditors, but certain other creditors appear and oppose an adjudication thereon, a subsequent vote of the stockholders, ratifying the action of the directors, will not relate back, so as to cut off the rights of the objecting creditors.

**3. SAME—CORPORATION PROCURING CREDITORS TO FILE INVOLUNTARY PETITION — Evasion of Statute.**

Where the directors of a corporation make a written admission of its inability to pay its debts, and of its willingness to be adjudged bankrupt on that ground, and request and procure the filing of a petition in bankruptcy against it by three creditors, one of them being the president of the company, and the others acting under his direction and control, alleging such admission as an act of bankruptcy by the corporation, quere, if such petition, though involuntary in form, is, in effect, the voluntary act of the corporation, and an attempt to evade the provision of the bankruptcy act, which withholds from corporations the right to take the benefit of the act as voluntary bankrupts.

**In Bankruptcy.**

Louis H. Kileski, for Bates Mach. Co.

Geo. Fred Williams, Carver & Blodgett, and Mason & Proctor, for objecting creditors.

LOWELL, District Judge. This was a petition in bankruptcy filed December 3, 1898, by Ingham, Abbott, and McKenzie, against the Bates Machine Company, a Massachusetts corporation, alleging as an act of bankruptcy that the company had admitted, in writing, its