

be in existence anywhere before the bankruptcy proceedings as a valid claim against Dyer but in the hands of Jackson, nor since but in his hands, where it would belong to the trustee, or in the hands of the trustee as an asset of the estate. Dyer might be embarrassed if the bank should indorse it; therefore such indorsement should be restrained, and Dyer should not then be permitted to set up the note so unaccounted for against payment to the trustee of what is justly due from him to the estate. These proceedings may remain pending for carrying out these suggestions. Ordered accordingly.

GOODIER v. BARNES et al'

(Circuit Court, N. D. New York. June 19, 1899.)

1. **BANKRUPTCY—JURISDICTION OF CIRCUIT COURT—CITIZENSHIP.**

Under Bankruptcy Act 1898, § 23, a circuit court of the United States has no jurisdiction of a bill in equity by a trustee in bankruptcy to set aside an alleged fraudulent conveyance of property by the bankrupt, when the bankrupt, the trustee, and the defendant are all citizens of the same state.

2. **SAME.**

Clause c of section 23, providing that "the United States circuit courts shall have concurrent jurisdiction with the courts of bankruptcy, within their respective territorial limits, of the offenses enumerated in this act," has no applicability to civil actions; the "offenses enumerated" meaning the crimes described in section 29.

In Equity. Motion to dismiss the bill on the ground that this court has no jurisdiction of the action, which is brought by a trustee in bankruptcy to set aside an alleged fraudulent transfer by the bankrupt of his property. All the parties are citizens of this state and reside in this district.

Fred. G. Fincke, for the motion.
Fred. H. Hazard, opposed.

COXE, District Judge. No papers have been submitted on this motion except the briefs. The court understands that no objection is made to the form of the motion and that the sole question which counsel desire the court to determine is whether or not the circuit court has jurisdiction of the action. The court has been unable to find an authority sustaining the jurisdiction; none is cited. A persuasive argument, sustained by several recent decisions, can be advanced in favor of the jurisdiction of the district court in these cases, but this conclusion, if affirmed, will not aid the complainant. Although the authorities are not in accord as to the proper construction of the present act, they all, apparently, agree that section 23 prohibits the circuit court from entertaining jurisdiction of actions of this character. *Burnett v. Mercantile Co.*, 91 Fed. 365; *Mitchell v. McClure*, Id. 621; *In re Sievers*, Id. 366; *Carter v. Hobbs*, 92 Fed. 594; *In re Abraham*, 93 Fed. 767; *Hicks v. Knost*, 1 Nat. Bankr. News, 336, 94 Fed. 625.

The proposition that paragraph c of section 23 of the act is applicable to a civil action cannot be maintained. It is limited by express words to "the offenses enumerated in this act," namely, the crimes described in section 29. The motion is granted.

CAMP v. ZELLARS.

(Circuit Court of Appeals, Fifth Circuit. June 1, 1899.)

No. 836.

BANKRUPTCY—JURISDICTION—SUITS BY TRUSTEE.

The district court, as a court of bankruptcy, has no jurisdiction of a petition by a trustee in bankruptcy for the cancellation of a conveyance of land previously made by the bankrupt to his wife, and alleged to have been fraudulent as to creditors, and for the recovery of the land for the benefit of the estate, nor to enjoin the bankrupt's wife from prosecuting a suit against the trustee to recover personal property claimed by her.

Petition for Revision of Decision of the District Court of the United States for the Northern District of Georgia.

H. A. & B. T. Camp were duly declared bankrupts as a partnership and as individuals. T. M. Zellars was appointed trustee of the estates of said bankrupts. After the passage of the bankruptcy act, and within four months of the time in which the petition in involuntary bankruptcy was filed in this cause, H. A. Camp conveyed certain real estate to his wife, Mrs. C. B. Camp, and placed her in possession of the same. T. M. Zellars, as trustee, filed a petition in said United States district court against Mrs. C. B. Camp, seeking to have said conveyance canceled, and to recover said lands for the benefit of the estate. The petition of said trustee is in the nature of a suit to cancel the said conveyance as fraudulent. The petition also alleges that Mrs. C. B. Camp has brought certain suits against the trustee to recover personal property claimed by her. The petitioner seeks to have these suits enjoined. Mrs. Camp filed a demurrer to this petition, upon the ground that the district court had no jurisdiction to hear and determine the question, and because the controversies referred to in said petition must be determined by a separate action at law or in equity, they being no part of the bankruptcy proceedings proper. This demurrer was overruled by the district court. The matter is brought to this court by a petition filed by Mrs. C. B. Camp, alleging that the district court erred in overruling the demurrer, and praying that this court superintend and revise the action of the district court.

H. A. Hall, for petitioner.

Alex. W. Smith, for respondent.

Before PARDEE, McCORMICK, and SHELBY, Circuit Judges.

PER CURIAM. We are of the opinion that the district court erred in overruling the demurrer. The judgment of the district court is reversed. The district court is directed to sustain the demurrer of Mrs. C. B. Camp to the said petition filed by T. M. Zellars, trustee. *Bernheimer v. Bryan* (present term) 93 Fed. 767.