

the protection of the bona fide purchaser only; and it clearly shows that the intent of the section is to reach out beyond the levy itself, and to make null and void all that is done under the levy, except as to the title of the bona fide purchaser. So far as concerns the judgment creditor, the lien and the levy being null and void, he can take no advantage from it, nor acquire any right to the proceeds. A valid title passing presumptively to the purchaser at the sheriff's sale, the proceeds stand in the sheriff's hands as a mere substitute for the goods, to which the judgment creditor gets no right, but which belong to the bankrupt's estate, as the goods themselves would have belonged but for the sale to a bona fide purchaser.

The provisions of the act of 1867 are so different from those of the present statute on this point as not to be applicable.

The stay is continued, and an order may be taken directing the payment of the moneys to the trustee when appointed.

In re DUNNIGAN.

(District Court, D. Massachusetts. July 14, 1899.)

No. 472.

1. **BANKRUPTCY—PARTNERSHIPS—INFANT PARTNER.**

Where proceedings in involuntary bankruptcy are instituted against a firm, and it appears that one of the partners is a minor, an adjudication should be made against the adult partners and against the firm as such, but as to the infant partner the petition should be dismissed.

2. **SAME.**

Bankruptcy Act 1898, § 5, cl. h, providing that, "In the event of one or more but not all of the members of a partnership being adjudged bankrupt, the partnership property shall not be administered in bankruptcy, unless by consent of the partner or partners not adjudged bankrupt," does not apply to a case where the infancy of the partner not adjudged bankrupt was the only ground for dismissing the petition as to him.

In Bankruptcy. On report of referee in bankruptcy on a contested petition for adjudication in involuntary bankruptcy.

Greene & Davenport, for petitioning creditors.

Winn & Griswold, for bankrupts.

LOWELL, District Judge. The allegations in the petition have been established, and upon this point I find no reason to differ from the report of the referee, to whom the case was referred, under rule 12, to ascertain and report the facts. The only difficulty is created by the fact not stated in the petition, but properly set up in the answer, and not disputed, that one of the respondents, a member of the respondent firm, is a minor. Upon the whole, the authorities make it pretty clear that an infant cannot generally be made an involuntary bankrupt, and sound reasoning leads to the same result. In re Derby, 6 Ben. 232, Fed. Cas. No. 3,815; Farris v. Richardson, 6 Allen, 118; In re Brice, 93 Fed. 942. Under these circumstances, an adjudication should be made against the partner who is of age, and against the firm. As to the minor partner, the petition should be

dismissed without costs, and with a specific statement that the dismissal is made by reason of his minority. See *Lovell v. Beauchamp* [1894] App. Cas. 607. As was observed by Lord Ashbourne, at page 614:

"It would be most unfortunate if the adult members of a partnership could evade liability because one of the partners was a minor. If this was laid down, minors would be found in many partnerships."

It is true that section 5, cl. h, of the bankrupt act, provides that, if one or more, but not all, of the partners are adjudged bankrupt, the partnership property shall not be administered in bankruptcy, but by the nonbankrupt partner. This provision, however, seems to me not intended to apply to a case in which the exempt partner escapes only because of his minority. To permit him alone by reason of his minority to settle the partnership business would be absurd. Decree in accordance with opinion.

In re FERGUSON.

(District Court, S. D. New York. May 16, 1899.)

1. BANKRUPTCY—ACTS OF BANKRUPTCY—SUFFERING LEGAL PROCESS.

Bankruptcy Act 1898, § 3, cl. a., providing that it shall be an act of bankruptcy if an insolvent debtor shall suffer a creditor to obtain a preference through legal proceedings, and not vacate or discharge the same at least five days before sale of the property affected, does not apply to liens acquired by legal proceedings more than four months before the filing of the petition in bankruptcy, and which therefore will not be dissolved by an adjudication.

2. SAME.

Where executions on confessed judgments were issued and levied on goods in the defendant's store, for the apparent purpose of forestalling such action on the part of other creditors, and after the levy the sheriff was instructed by the attorney for the judgment creditors to "do nothing until further ordered," and the keeper who had been placed in charge was withdrawn, and about a year later other executions on the same judgments were issued and levied on the same property, *held*, that the earlier executions had become dormant, that the only valid lien was under the later executions, and that the defendant's failure to discharge the preference acquired by such lien, within five days before the sale, was an act of bankruptcy, on which, a petition being filed within the next four months, an adjudication against him might be made.

In Bankruptcy.

David B. Ackerman, for petitioning creditors.
Roger M. Sherman, for the bankrupt.

BROWN, District Judge. On the 12th day of April, 1899, a petition was filed by creditors of George D. Ferguson, seeking to have him adjudged a bankrupt on the ground that, being insolvent, he had not vacated a preference acquired by sheriff's levy on his stock of goods five days before April 13, 1899, on which day the sale, as advertised, was to take place. Bankruptcy Act, § 3, cl. a, subd. 3. The debtor appeared and answered, denying only the act of bankruptcy alleged.