HESSELTINE v. PRINCE et al.

(District Court, D. Massachusetts. July 6, 1899.)

No. 1,011.

1. BANKRUPTCY—PROPERTY VESTING IN TRUSTEE—ESTATE BY CURTESY.
In Massachusetts, under the statutes of that state, a husband's interest in the real estate of his wife, during her lifetime and after issue born, is not property which he could convey or assign, and consequently it will not pass to his trustee in bankruptcy as assets of his estate.

2. SAME—POWERS.
A husband's interest in his wife's real estate during her life is not a "power," within the meaning of Bankruptcy Act 1898, § 70(3), vesting in a bankrupt's trustee "powers which he might have exercised for his own benefit."

In Bankruptcy. On demurrer to a bill in equity filed by the complainant, as trustee in bankruptcy, to reach certain property alleged to be assets of the estate in bankruptcy.

Hesseltine & Hesseltine, for complainant.
James P. Prince, for defendants.

LOWELL, District Judge. This was a bill in equity filed in the district court, under the provisions of the bankrupt law, to reach the interest of a husband, after the birth of issue, in the real estate of which his wife is seised; the wife being still alive. The defendant raised no objection to the jurisdiction of the court, or to the form of proceeding, but demurred to the bill for want of equity. It is necessary, therefore, to determine if the right of the husband, whether it be properly described as tenancy by the curtesy initiate, or otherwise, passes to the trustee in bankruptcy, under the present law. The rights of the husband in the property of his wife are limited by the statutes of Massachusetts, and this court is governed by the interpretation put upon those statutes by the supreme court of the commonwealth. In Lynde v. McGregor, 13 Allen, 182, 184, it was said by Mr. Justice Gray that "these statutes are inconsistent with the hypothesis that the husband has any estate in his wife's land which he can convey separately during her lifetime, or which will pass to his assignees in insolvency." The insolvent law of Massachusetts (Gen. St. c. 118, § 44) vested in the assignee in insolvency all the property of the debtor which the latter could have lawfully sold, assigned, or conveyed. This language is as broad as that of section 70(5) of the bankrupt act, and hence it must be taken that the husband's right in his wife's real estate above described does not pass to the trustee in bankruptcy. See, also, Walsh v. Young, 110 Mass. 396, 399. Section 70(3) was relied upon in argument by counsel for the trustee; but, however the husband's right in his wife's real estate should be described, it certainly is not a power. Demurrer sustained, and bill dismissed, with costs against the estate.

In re MICHEL.

(District Court, E. D. Wisconsin. May 1, 1899.)

BANKRUPTCY—COSTS—FEE TO ATTORNEY OF INVOLUNTARY BANKRUPT.

Under Bankruptcy Act 1898, § 64, authorizing the allowance of a reasonable attorney's fee "to the bankrupt in involuntary cases while performing the duties herein prescribed," a reasonable fee may be allowed to the attorney of an involuntary bankrupt for his services in drawing the schedules and making copies of the same, and also for attending the bankrupt upon the latter's examination before the referee.

In Bankruptcy. On question certified by referee in bankruptcy.

The referee's certificate was as follows:

I, D. Lloyd Jones, one of the referees of said court in bankruptcy, do hereby certify that in the course of the proceedings in said cause before me the following question arose pertinent in the said proceedings:

This is a case of involuntary bankruptcy. On the 7th day of April, 1899, Edward S. Bragg, attorney for the above-named bankrupt, presented to me for allowance his bill for services rendered to the above-named bankrupt, which bill is hereto annexed, and accompanied by a petition of said Edward S. Bragg, praying for an order to the trustee herein, requiring him to pay the same out of the proceeds of the estate of the said bankrupt. The items charged for by the bankrupt's attorney were as follows:

1899. Jan. 22. Drawing schedules, etc.
Jan. 24. Making three copies.
Jan. 25. Completion and verification of copies.
Feb. 15. Attendance at Milwaukee, before referee, expenses.
Feb. 22. Attendance before referee, expenses.

I am in doubt as to the extent of my authority in passing upon or allowing such bill. Section 64 of the bankrupt act authorizes the payment of one reasonable attorney's fee "to the bankrupt in involuntary cases while performing the duties herein prescribed." The gross assets, as I am informed in this case, amount to between nine hundred and one thousand dollars; and the debts proved against the estate amount to over sixty-nine hundred dollars. The examination of the bankrupt, held before me, occupied a portion of two half days. Being in doubt as to my authority to allow for services of a bankrupt's attorney in excess of the services for drawing schedules, I certify this question to the court for its opinion and instructions thereon.

E. S. Bragg, in pro. per.

SEAMAN, District Judge. Section 64 prescribes the expenses which are "to be paid in full out of the bankrupt's estate," including under "(3) the cost of administration" one reasonable attorney's fee for professional services actually rendered "to the bankrupt in involuntary cases while performing the duties herein prescribed." And section 7 enumerates the duties which are imposed upon the bankrupt when either class of petition is filed. The bankrupt is entitled to the benefits of counsel for the performance of each of the several acts named, and I am of opinion that the referee is empowered to make and adjust the allowance accordingly, based upon all the circumstances, and having regard to reasonableness, both in the extent of services and their value."