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The jurisdiction of the referee in bankruptcy over a creditor of the bankrupt depends upon the nature of the claim asserted by the creditor against the bankrupt according to the principle established in the recent case of *In re Martinez* (C. C. A. 10th, No. 2089, decided October 21, 1940, rehearing denied November 19, 1940). In this case the bankrupt applied in writing for a loan from the Personal Finance Company of Colorado. In this written application he made certain representations concerning his financial status and ability to repay the loan.

These representations were materially false and the creditor began an action in the state court during the pendency of the bankruptcy proceeding, seeking to recover damages from the bankrupt on account of the false pretenses and representations made by the bankrupt in his application. The referee promptly enjoined the company from further prosecution of the suit in court.

The company thereupon filed an application to vacate and set aside the restraining order, attaching to its application a copy of the verified complaint filed in the state court. The referee and federal district court denied the application. Upon appeal to the circuit court, Circuit Judge Phillips pointed out that Section 17 of the bankruptcy act (11 U. S. C. A., Sec. 35) provides that a discharge in bankruptcy would not release a bankrupt from a liability for obtaining money by false pretenses or false representations. Since in this case the claim asserted by the company against the bankrupt was one from which the bankrupt would not be released by a discharge in bankruptcy, it was error to enjoin the action in the state court. Therefore, the injunction against the company should be dissolved.

This decision reaffirms the principle asserted *In re Lawrence* (Dist. Ct. Ala.), 163 Fed. 131 (1908), wherein under similar circumstances the court held that in the event the state court suit was a bona fide proceeding for obtaining money by false pretenses or representations, the referee has "no jurisdiction to try the merits of the suit, but must remand the parties to the state court, and permit that court to pass upon the merits of the contention as to whether it is barred by the discharge in bankruptcy."

This case and a large number of cases which follow its basic principle clearly establish that dischargeability of the debt is the basis of the jurisdiction of the referee in bankruptcy over that particular debt and the

creditor asserting it. The question which these cases suggest and which remained unanswered until recently was: How is the question of jurisdiction of the referee to be determined in these cases where a suit is pending in a state court on a liability which the creditor asserts is non-dischargeable in bankruptcy?

Should the referee require the creditor to submit conclusive proof on the non-dischargeability of the claim? Should the referee require that the creditor submit such proof of the non-dischargeability of the claim as would be sufficient to withstand the test of a non-suit or directed verdict in the state court? Should the referee do anything more than to require the creditor to submit to him a copy of the verified complaint filed in the state court?

These questions, which arose by virtue of unanswered implications in *In re Lawrence*, were again suggested but left unanswered in the case of *Family Small Loan Company of Richmond vs. Mason* (C. C. A. 4, 1933), 67 Fed. (2) 207, wherein the court, reaffirming the principle of the Lawrence case, remarked: "Interesting questions discussed in the briefs as to whether the bankruptcy court should hear evidence on the nature of the debt where the pleadings in the state court show a debt that is not dischargeable, need not be considered, as here the court considered the evidence presented in the form of a stipulation by counsel; and this evidence, as well as the pleadings in the state court, showed a debt which was not dischargeable."

These questions have been answered, however, in the case of *In re Alvino* (C. C. A. 2, 1940), 111 Fed. (2) 642, which states that the lower court was in error in holding that the creditor should have submitted proof of fraud. The creditor "did enough when it showed the court a copy of the complaint filed in the action in the state court."

This decision presents the most satisfactory answer to the problem. If the creditor is faced with submitting conclusive proof of non-dischargeability of the claim before the referee, he is in fact forced to try his case in two courts on the same facts before he is entitled to relief. If the creditor is able to convince the referee on the order to show cause, he nevertheless is faced in the state court with the task of proving fraud in the inception of the obligation. Here the creditor may either lose or win the verdict, depending upon the host of things incident to the trial of a law suit, even though he has once conclusively proved his case. If he fails to convince the referee, he is faced with the principle of res adjudicata should he bring a suit in the state court after discharge. Any rule which is dependent upon the degree of proof to be submitted to the referee by the creditor on the dischargeability of the debt is subject to these same criticisms plus the additional problem of determining whether the proof meets the degree thought to be necessary by each individual referee.

The solution set forth in *In re Alvino* makes the matter a very simple and inexpensive one for both debtor and creditor. If the complaint in the state court unmistakably makes the action one in deceit for obtaining money by false representation or false pretense, the referee can immediately determine that he has no jurisdiction over the matter. Thus the entire issue of fraud is left properly with the state court to determine. If, on the other hand, it finds that there was not fraud in incurring the debt, the debtor is still protected by the adjudication and discharge in bankruptcy. If the state court finds that the debt was incurred by false pretenses or representations, the creditor is left to the remedies provided by the state law.

In the exercise of these remedies during the pendency of the proceedings in bankruptcy, the creditor must avoid, however, any interference with property under jurisdiction of the bankruptcy court. If the creditor attaches or in any manner interferes with the possession or control of property of the bankrupt properly within the jurisdiction of the bankruptcy court, then it must answer to that court for improper interference with the orderly administration of the estate of the bankrupt.

Edward J. Ruff

Reports on the Colorado Junior Bar Conference

It is too early in the year to report any active achievements, but an excellent start has been made toward one of the most successful years in the short history of the Conference. Committee chairmen and members have been appointed, the membership of each committee being subject to change by the chairman. The council posts have been filled from all eligible districts. By resolution at the annual meeting, the Conference chairmen of past years were made honorary council members without vote.

Several members of the Conference volunteered on October 16 to assist the various boards and commissions throughout the state in the registration under the Selective Service Act, and at the present time several are serving as advisors to the registrants.

The most urgent requirement at the present time is that all the members realize that there are a great number of younger lawyers in the state who are not members of the organization, and do their best to show these men the advantages of membership in the Conference.

In the past year the new members of the Conference were more than double its membership quota, and it is hoped that we can do as well, or better, this year.