

the manner in which such powers shall be exercised by the courts." Code Ga. 5078.

This provision of the state constitution has been interpreted by the highest court of appeals in the state to confer on the legislature the exclusive power to charter telegraph companies. In *Kehler v. Jack Manufg Co.*, 55 Ga. 641, the supreme court say:

"In our judgment, it was the true intent and meaning of the constitution to confer upon the general assembly the *exclusive* power to grant charters to all the excepted companies named therein."

Now, a telegraph company is an "excepted company named therein." It follows, therefore, that since the charter of the Doboy & Union Island Telegraph Company was granted by a court and not by the Legislature, not only does its cable which obstructed the anchor of the *Industria* appear to be unauthorized by the state, but the plaintiff corporation disappears from the record, and "leaves not a wrack behind." It follows that the proceedings against the *Industria* must be dismissed.

In re HERZBERG, Bankrupt.

(District Court, S. D. New York. November 24, 1885.)

BANKRUPTCY—INJUNCTION—DISCHARGE—SECTION 5106.

An injunction is authorized by section 5106, to await the determination of the question of the bankrupt's discharge only. After the discharge has been granted, the bankrupt's relief against the further prosecution of suits in the state courts must be obtained in those courts only, where the effect of the discharge must be determined. *Held, therefore*, that an injunction obtained *ex parte* in the bankruptcy court, after the discharge had been granted, continuing the previous injunction, was improvidently granted, and should be vacated.

In Bankruptcy.

N. L. Hahn, for bankrupt.

Van Loon & Capron, for creditors.

BROWN, J. The bankrupt in this case procured from this court an injunction staying the proceedings against him in the state court until the determination of the question of his discharge. His discharge was obtained on the twenty-fifth of June, 1885. On the following day he obtained from this court *ex parte* a further injunction perpetually staying the prosecution of the action in the state court. A motion is now made to vacate the last-named order as improvidently granted. Section 5106 of the Revised Statutes authorizes the court in bankruptcy to stay prosecution of suits against the bankrupt "to await the determination of the court in bankruptcy on the question of his discharge." In the *Case of Rosenberg*, 3 Ben. 14, 18, BLATCHFORD, J., says:

"The manifest object of the provision is to relieve the bankrupt, while he is proceeding in good faith to obtain his discharge, and until the question

of his discharge is determined, and he either obtains it or is refused it, from being harassed by suits for the recovery of provable debts. If the amount of a debt is in dispute, the suit may proceed so as to put the debt in a condition of provability, and then it must stop. If a discharge is granted, then the bankrupt is able to plead the discharge in any suit that may have been stayed, and the stay ceases."

The same learned judge, in the *Case of Wright*, 2 Ben. 509, says:

"The question whether the discharge affects the debt in question can only arise and be determined between the parties in a suit prosecuted to collect the debt, in which the discharge, after it shall have been granted, shall be pleaded or set up as a bar to a recovery."

It would be manifestly improper, therefore, for this court, after the bankrupt's discharge had been granted, to undertake to determine its final effect upon the creditor's claim in the state court. The bankrupt is justly entitled to a fair opportunity to present the question in the state court, and have it litigated there. It cannot be doubted that, upon proper application in that court, such an opportunity will be granted, unless the debtor has in some way forfeited his right thereto. In any event, it is not a matter for further adjudication or injunction in this court, after the order granting the discharge. The motion to vacate must therefore be granted.

In re BAXTER and another, Bankrupts.

(District Court, S. D. New York. November 30, 1885.)

1. BANKRUPTCY—PROOF OF DEBT—PREFERENCE—REV. ST. § 5084—RETURN OF PAYMENTS.

A return of part payments as a condition of proof of debt is not required by section 5084, except upon the concurrence of an intent in the bankrupt, when the payment was made, to create a preference, together with knowledge of his unlawful intent by the creditor.

2. SAME—STATEMENT OF THE CASE.

Where B. & Co., of New York, being indebted to D., C. & Co., of London, remitted to the latter by mail on July 29th, in the usual course of business, and with no intent to create a preference, a bill of exchange for £1,000, payable to D., C. & Co., drawn upon J. Bros., of London, factors, on account of produce consigned to the latter by B. & Co., and the bill was received by D., C. & Co. on August 9th, and sent the same day to J. Bros. for acceptance, who delivered it to D., C. & Co. on the 10th; B. & Co. failed on Saturday, August 7th, and made an assignment for the benefit of their creditors; but J. Bros. had no knowledge of the failure at the time the acceptance was delivered by them to D., C. & Co.; but D., C. & Co. were informed thereof by telegram the evening previous: *held*, that the bill being accepted in good faith by J. Bros., in the usual course of business, was binding upon them from the time of its delivery to D., C. & Co., and operated as an equitable charge or lien upon the produce in J. Bros.' hands, notwithstanding the prior voluntary assignment of B. & Co.; that the draft having been mailed 12 days before by the bankrupts, also in the usual course of business, and with no intent to prefer, was not an act in violation of any provision of the bankrupt law, and that the case was not,