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THE JURISDICTION OF THE UNITED STATES CIRCUIT COURT IN BANKRUPTCY, ORIGINAL AND APPELLATE—THE EXTENT OF THE EXCLUSIVE ORIGINAL JURISDICTION OF THE UNITED STATES DISTRICT COURT IN BANKRUPTCY—THE LIMITED SPHERE OF THE CONCURRENT ORIGINAL JURISDICTION OF THE CIRCUIT AND DISTRICT COURTS, UNDER THE PRESENT BANKRUPT LAW.

MUCH diversity of opinion exists touching *the nature* and *extent* of the jurisdiction in bankruptcy of the United States Circuit Courts, and *the extent* to which the jurisdiction of the District Courts is *exclusive*, under the peculiar provisions of the Bankrupt Law of 1867.

By the 1st section of the law original jurisdiction in bankruptcy is given to the District Courts, in their respective districts, in all matters and proceedings in bankruptcy; but this original jurisdiction is not made, or declared to be, *exclusive*. The 11th section of the law, however, in prescribing the mode of instituting proceedings for *voluntary* bankruptcy, requires all such cases in bankruptcy to originate in the District Courts. So that, in this class of cases, which comprehends by far the greater part (perhaps more than nine-tenths) of the cases under the Bankrupt Law in this country, the original jurisdiction of the District Courts is *exclusive*, except so far as it may be qualified by the superintending jurisdiction of the Circuit Court. But the law contains no such provision touching that class of cases denominated proceed-

ings for *involuntary* bankruptcy. The 2d section of the act confers jurisdiction in bankruptcy on the Circuit Courts, in language comprehensive and explicit. The 39th section authorizes proceedings by creditors for *involuntary* bankruptcy, and defines the various grounds for the same; and the 40th, 41st, and 42d sections prescribe the mode of procedure in this class of cases, *but no express provision is made directing in which court they shall originate or be first commenced.* That appears to be left to the election of the creditors under the jurisdiction defined and given in the two first sections of the law. Proceedings of *voluntary* bankruptcy, that is, where the debtor comes in and petitions for his discharge, are essentially different and distinct, both in *nature* and *object*, from proceedings by creditors for *involuntary* bankruptcy. The former are the creature of statute law and unknown to either the common law or equity; while the latter comprehend and accomplish the purposes of all the ordinary remedies in chancery of creditors against fraudulent and insolvent debtors, by bill, petition, and other proper process in equity; and in which the Circuit Courts had, prior to the enactment of the Bankrupt Law, original jurisdiction. The one is intended for the relief of the honest debtor, who, without fault on his part, has been overwhelmed by misfortune or unavoidable commercial disaster, the other intended to give greater efficiency to existing equitable remedies of creditors against the frauds and fraudulent contrivances of dishonest debtors.

The jurisdiction in bankruptcy of the Circuit Courts is derived from the 2d and the 8th sections of the law. The latter, or 8th section, provides for and defines the appellate jurisdiction of the Circuit Courts; and authorizes them to review and reverse the judgments and orders of the District Courts "*in all cases in equity*" on appeal, and "*in cases at law*, on writs of error," when the amount involved exceeds $500. But the 2d section of the law confers other and different jurisdiction on the Circuit Courts, in the words following, to wit:—

"That the several Circuit Courts of the United States, within and for the districts where the proceedings in bankruptcy shall be pending, shall have *a general superintendence and jurisdiction* OF ALL CASES AND QUESTIONS *arising under this act;* and except when special provision is otherwise made, may, *upon bill, petition, or other proper process, of any party aggrieved, hear and determine the case as a court of equity.* The *powers* and *jurisdiction* hereby granted *may be exercised* either by *said court*, or by *any justice thereof*, in term time or vacation."

This provision is alike comprehensive and explicit; and the jurisdiction conferred admits of an appropriate and just application in the judicial organization for which it was intended, without *interpolating* limitations or qualifications by construction, but by giving full effect to the sense and all the words of the law in the order in which they stand, and according to their fair and ordinary import.

The jurisdiction of a court is the power to hear and determine *judicially* a matter or controversy when brought before it *in due form* to invoke judicial action. Although jurisdiction may be conferred upon a court in *all cases* arising under a particular statute, or out of a particular subject-matter, yet that power or jurisdiction *cannot be exercised until a proceeding be instituted before that court* invoking its exercise. Hence, there is no inconsistency or contradiction in authorizing each of *several distinct courts* to hear and determine *all cases*, as of their original jurisdiction, arising under a particular statute or out of a specified subject-matter. It is simply *concurrent original jurisdiction;* and all conflict is prevented by the established rule of judicial action, that where a case arises, over which several distinct courts have concurrent original jurisdiction, that court in which the jurisdiction first attaches, has the right to proceed and determine the case, unless there be *some special provision* made for the transfer of the case from that court to another court having concurrent jurisdiction: *Smith* v. *McIver*, 9 Wheat. 532.

The different kinds of jurisdiction *known to the law*, and bearing upon the question under consideration, are the following, to wit: *original* and *appellate*, and *concurrent* and *exclusive*.

This jurisdiction given to the Circuit Court under the 2d section must be either *original* or *appellate*, *concurrent* or *exclusive*. It cannot be *appellate* jurisdiction, for that is an appeal from the judgment or decision of another court, and provided for in the 8th section of this act, and it cannot take place until after a court of original jurisdiction has previously acted. On this subject Mr. Justice STORY, in his Commentaries on the Constitution, vol. I., p. 627, said:—

"In reference to judicial tribunals, an appellate jurisdiction, therefore, necessarily implies that the subject-matter has been already instituted in *and acted upon by some other court* whose judgment or proceedings are to be revised. This appellate jurisdiction may be exercised in a variety of forms, and indeed, in any form

which the legislature may choose to prescribe; but still, the substance must exist, before the form can be applied to it. To operate at all then under the Constitution of the United States, it is not sufficient that there has been *a decision* by some officer or department of the United States; it must be by one clothed with judicial authority, and acting in a judicial capacity."

If this jurisdiction of the Circuit Courts be not *appellate*, it must be *original* jurisdiction, and that always imports or implies the power of the court to take cognisance of the case in the *first instance*, except where special provision is otherwise made as to its commencement. It is not, perhaps, essential to the exercise of original jurisdiction, that the case always originate in the court in which it is exercised. Cases originating in the state courts are allowed to be transferred to the United States Circuit Courts; but this only occurs in cases where the United States courts *might* have taken jurisdiction in the first instance. And the form of originating or first instituting a proceeding for the exercise of original jurisdiction by a court, may of course be subject to special and express statutory provision. The power to hear and determine an original suit, although first commenced in another court, in which no judgment had been rendered, is original jurisdiction. And although original jurisdiction implies the authority of taking cognisance of the suit in the first instance, yet that is not an inseparable incident, as by express provision of law, a court may have the power to determine and render the original judgment in a suit first instituted in another court.

The United States District and Circuit Courts acquire their organic structure, and the form of their jurisdiction, from a statute of the United States. The relation they sustain towards each other, in the same judicial district, is of an intimate and kindred character. In many matters they have heretofore exercised concurrent original jurisdiction; and the district judge is not only authorized to sit in the Circuit Court with the judge of the Supreme Court, but also in his absence to hold the Circuit Court. It is undoubtedly within the power of Congress to blend to some extent the jurisdiction of these two courts, or even to consolidate them. The Circuit Courts, therefore, can most clearly be empowered to exercise what is termed original jurisdiction, in cases first commenced, or pending, in the District Courts. And although this may be, in one sense, *concurrent*, it may be in the nature of a *superintending* jurisdiction. A superintendence of

one court, over cases originally instituted and pending in another court, is the power of controlling and directing the action of the latter, in the exercise of its *original* jurisdiction, and is, therefore, as a matter of fact, one form of exercising *original* jurisdiction.

The rule is not to be overlooked, that remedial statutes are to be liberally construed; and that courts are bound by the language used by the law-making power, taking the words in their usual and ordinary meaning, and giving full scope to their signification, except so far as they are necessarily qualified by the context, or some express limitation in some other part of the statute, or by some other law.

With these preliminary observations in view, especial attention is invited to the *actual import of the 1st and 2d clauses* of the 2d section of the law above recited. What is the true *nature* and *extent* of the jurisdiction here conferred on the Circuit Court? The *first clause* gives "a *general superintendence* and *jurisdiction of all cases and questions* arising under this act." Superintendence is the authority of oversight, direction, and control. The superintendence here authorized, is given to a judicial tribunal—is *a judicial power.* It necessarily implies the existence of a subordinate court, in which these cases and questions arise, over which this superintendence is authorized. The court is not named, but the power will reach cases and questions in the District Court, or in any other tribunal which has been, or may hereafter be, authorized to administer the Bankrupt Law. It is the superintendence exercised originally in England by the Lord Chancellor, in all matters and proceedings in bankruptcy pending before the commissioners, and was subsequently exercised by the court of review (after the judicial organization under the statute 1 & 2 W. 4, c. 56) over all matters pending in the Courts of Bankruptcy held by the commissioners under the new organization. In England, the exercise of this superintending power was invoked on petition or motion: 1 Chitty's Gen. Pr. 543. This authority was only partially provided for, in the U. S. Bankrupt Law of 1841, as follows, to wit:—

"That the district judge may *adjourn any point or question* arising in any case in bankruptcy *into the Circuit Court* for the district, in his discretion, to be there heard and determined, and for this purpose the Circuit Court of such district shall also be deemed always open:" Sec. 6, U. S. Bank. Law of 1841.

But under the present Bankrupt Law, the power of *superintendence* is given in language as comprehensive as that used in the English statute, and in addition thereto, are the words, "*and jurisdiction of all cases and questions*," &c. So, that, besides giving the Circuit Court a general superintendence of all cases and questions arising under this law, there is conferred "*a jurisdiction* of all cases and questions *arising under the law*." If the words, "*and jurisdiction*," are to be interpreted as a mere qualification of the superintendence granted, they are superfluous and unmeaning. For the "general superintendence" given to the Circuit Court, is a judicial power which is in no wise enlarged or limited by the words "and jurisdiction." The ordinary legal signification of the term jurisdiction, as applied to a court, is the authority to take judicial cognisance of a case *in that court*, whereas the superintendence here given, is the power of direction or control over a case, or questions arising in a case, in another court. So, that, taking the words of the statute in the usual sense, and giving to them their appropriate meaning, the language employed is sufficient to confer every phase of original jurisdiction. In reference to the similar language used in the Massachusetts Insolvent Law, the Supreme Court of that state, in *Lancaster et al.* v. *Choat et al.*, 5 Allen's R. 535, said: "This language is broad enough to include all questions of fact as well as of law, and the forms of proceeding are free from technical restraints." It is limited and controlled, however, by provisions in other parts of the Insolvent Law. So, also, is the provision in the Bankrupt Law, giving jurisdiction to the Circuit Court, limited or qualified by the 11th section, which requires all proceedings of *voluntary* bankruptcy to originate in the District Court. As to these, the original jurisdiction of the Circuit Court can only be in the nature of superintendence. But no such qualification or limitation exists as to cases of *involuntary* bankruptcy, as will appear more fully hereafter.

An opinion is somewhat prevalent, that the jurisdiction given to the Circuit Court, in the 2d section of the law, is limited to a mere *superintendence* over cases and questions, which have been passed upon in the District Court; and, that this superintendence is virtually an exercise of *mere appellate power*. And this opinion seems to be founded mainly on the mistaken impression, that the Bankrupt Law is identical with the Insolvent Law of the

state of Massachusetts, which contains a similar provision, in regard to the jurisdiction of the Supreme Court of that state, and which it is claimed, has been interpreted to that effect by that court.

Messrs. Avery & Hobbs, in their recent work on "The Bankrupt Law," on page 8, in reference to this provision in the 2d section of the Bankrupt Law, say:—

"The sixteenth section of Massachusetts Insolvent Law, General Statutes, c. 118 confers this power upon the Supreme Judicial Court of the state. *The language of the two acts is identical.*"

"Under the provisions of this section, the Circuit Court, as a court of equity, has full powers of superintendence of all cases arising in bankruptcy."

With no disposition to depreciate this highly respectable work, it must be acknowledged that the statement in the above extract is *inaccurate*. If the language of *the two acts be* "*identical*," the Bankrupt Law must be a substantial copy of the Insolvent Law of Massachusetts, in all its provisions. While some of the sections of the Bankrupt Law are in part copied from the Massachusetts Insolvent Law, other sections appear to have been taken from the Bankrupt Law of 1841, and some from the English Bankrupt Law. And not only is this Bankrupt Law applicable to a judicial system essentially different in its organization and the distribution of its judicial power from that of this state insolvent law, but it is also essentially different in many of its material provisions and features, touching the nature of its jurisdiction. The Courts of Insolvency of Massachusetts are subordinate local courts of each county, held by the judges and registers of probate and insolvency at the shire towns of their respective counties. The relation of the Supreme Judicial Court of that state to these local authorities forbids the idea of its being co-ordinate, or having concurrent jurisdiction with them; whereas the United States District Court is, in the same judicial district, a co-ordinate tribunal, and in many things having concurrent jurisdiction, with the Circuit Court; and in its nature and relation to the Circuit Court essentially different from that of the local insolvency courts of Massachusetts towards the Supreme Court of that state. The original jurisdiction of the Supreme Court of Massachusetts is not *concurrent*, but *paramount* and *superintending*, like that of the Lord Chancellor of England over the courts of bankruptcy in that country, held by the commissioners in bankruptcy. No

appeals are allowed in the Massachusetts law from the courts of insolvency to the Supreme Court; but by the 34th section of the law, an appeal is allowed to the Superior Court of the state, but expressly limited to the simple matters of the rejection or allowance of the claims of creditors in the courts of insolvency. By the 17th section all proceedings of insolvency on the application of the debtor, are *expressly required* to be *commenced in the local* insolvency courts of the county; and by the 103d section all *involuntary proceedings by creditors are likewise in express terms required to be first instituted in said local tribunals.* Very different in these regards, as well as others, are the provisions of the Bankrupt Law of the United States. Here there is no provision *requiring proceedings by creditors for involuntary bankruptcy to be first instituted in the District Courts.* And by the 8th section appeals from the decisions of the District Courts to the Circuit Courts *are allowed in all cases in equity, and writs of error in all cases at law*, where the amount involved exceeds $500.

These essential differences both in the structure or fundamental organization of these two different judicial systems, and in the very material provisions of the two laws, have a most important bearing upon the interpretation to be given to the language of each act, touching the distribution of judicial powers. *Concurrent original jurisdiction* being usual and appropriate in the relations of the United States District and Circuit Courts, is wholly incompatible with the relation of the Supreme Judicial Court of Massachusetts to the subordinate insolvency tribunals of that state. While the appellate power of the United States Circuit Court under the Bankrupt Law covers every judgment or decision of the District Court, it is not allowed at all from the decisions of these local insolvency courts to the Supreme Court of the state, and allowed to the Superior Court only to a limited extent. And while all proceedings under this state law are by express terms required to be commenced in the local courts of insolvency, the Bankrupt Law has no such provision as to proceedings in *involuntary* bankruptcy. It cannot, therefore, be correctly said that either "the language of the two acts," or their essential provisions touching the distribution of jurisdiction, are "*identical.*"

If the expression of these authors was intended in a restricted

sense, and to be limited to the language of the 2d section of the Bankrupt Act, as compared with the 16th section of the state law, it is *still inaccurate* in point of fact. The language or words used in the two acts in this respect are not "*identical.*" The Bankrupt Law gives the Circuit Court jurisdiction *of all questions*, as well as *all cases arising under this act*, while the Massachusetts law gives the jurisdiction only as to "*all cases arising*," &c. This is a very material difference. Touching this distinction, Chief Justice MARSHALL, in the famous case of Jonathan Robbins, said:—

"*A case in law or equity was* a term well understood and of *limited signification.* It was a controversy between parties that had taken a shape for judicial decision. If the judicial power extended *to every question under the Constitution*, it would involve almost every subject proper for legislative discussion and decision:" 5 Wheat. Rep., Appendix. Giving the court jurisdiction *of all questions* which may arise under the Bankrupt law, is granting a jurisdiction to hear and determine all questions arising under the law, which can be legally presented to the court for adjudication, however and wherever the jurisdiction may be legally invoked.

Where the jurisdiction conferred is of the general character of a *superintendence*, and has reference to "cases" which the express terms of the act have required to be first instituted in another court, it would necessarily have to be construed as a mere *superintending jurisdiction.* And such is necessarily the construction given to the Insolvent Law of Massachusetts. But where the jurisdiction conferred is denominated *a jurisdiction* in addition to "*a general superintendence*," and is extended to all *questions* as well as *cases* arising under the act, how could the court refuse to take cognisance of any such question, when presented in due and legal form in a case not required by the law to be first brought in another court? Why did Congress, in copying the phraseology of the 16th section of the Massachusetts law, deem it proper to make a change, and go further and extend the jurisdiction to "*all questions*," as well as cases? Was this a vain thing which meant nothing? Has it no significance when considered in connection with the fact that proceedings in bankruptcy by creditors against insolvent and fraudulent debtors (which was one of the ordinary subjects of the equity jurisdic-

tion of the Circuit Court prior to the enactment of the Bankrupt Law) are not now, by the terms of the law, required to be first brought in the District Court? Messrs. Avery & Hobbs, on p 11 of their work above mentioned, say, on this subject:—

"The court will grant relief under this section in all cases under this statute *where the statute itself has not prescribed a specific mode of relief: Wheelock* v. *Hastings*, 4 Met. 504; *Eastman* v. *Foster*, 8 Id. 19; *Barnard* v. *Eaton*, 2 Cush. 294."

Under this rule, sanctioned by the decisions of the Supreme Court of Massachusetts, the United States Circuit Court can grant relief as of its *original* jurisdiction in proceedings of *involuntary* bankruptcy, inasmuch as they are not by any specific mode of relief, prescribed in the law, required to be first brought in the District Court.

The idea that the superintending jurisdiction under the Massachusetts law had been interpreted by the Supreme Court of that state to be *appellate* jurisdiction, is an entire mistake. The decisions have been just the reverse. In *Barnard* v. *Eaton*, 2 Cush. 294, the petition was presented as upon an appeal. But the court held that they could not sustain it as an appeal, but did sustain it as an original petition, and granted the relief. And in *Lancaster et al.* v. *Choate et al.*, 5 Allen 534, the court, in reference to this provision in the Massachusetts Insolvent Law, said:—

"*It is not to be regarded as an appellate jurisdiction*, for such a construction of the law would be contrary to the manifest intent of the legislature, and the existence of such a jurisdiction would create needless delays and embarrassments in the operation of the system. Where a right of appeal is given as in case of a creditor whose claim is disallowed, it is given in unequivocal terms, and the appeal is to the Superior Court: St. 1838, c. 163, § 4. Yet in describing the jurisdiction of this court, and also the process by which parties may apply to the court and its course of proceeding thereon, the statute employs very comprehensive terms. It is a general superintendence and jurisdiction, as a court of chancery, in all cases arising under this act," and "in all cases which are not herein otherwise specially provided for, upon the bill, petition, or other proper process of any party aggrieved by any proceedings under this act, to hear and to determine the case as a court of chancery, and to make such order or decree therein as law and justice shall require:" St. 1838, c. 163, § 18.

The reasons assigned by the Supreme Court of Massachusetts in the same case, arising out of the peculiar nature of their local judicial system, sufficiently show that the interpretation given to this state Insolvent Law can have *no just* application in giving a

construction to this provision in the Bankrupt Law of the United States. They are as follows:—

"The reason for making this provision so extensive is to be found in the character of the Insolvent Laws. They invest courts of inferior jurisdiction, and for a time invested masters in chancery with an extensive power over the person, as well as the whole estate and business of an individual alleged to be insolvent, and interfere with the rights of his creditors, and of persons who have contracted with him. One important object, which is expressed by the statute in respect to the jurisdiction of this court, is to establish and maintain a regular and uniform course of proceedings in all the different courts. Another principle, which is so important that the legislature cannot be supposed to have overlooked it, is the right of trial by jury. There was not and could not well be a jury trial established in the courts of insolvency. The delays, perplexities, and expense incident to it would have destroyed the value of the system. The jurisdiction conferred on this court was manifestly intended to meet every exigency, whether foreseen or unforeseen. If the inferior tribunals should err as to the law or the facts, any party aggrieved was authorized to apply to this court, by a process adapted to the nature of his case, and might obtain an appropriate redress. His application does not bring the whole case before this court, but merely the point in respect to which he is aggrieved; and when the matter is corrected, everything else remains unchanged in that court:" 5 Allen 535.

The provisions of the Insolvent Law mentioned, expressly requiring all cases, whether instituted by a debtor or by a creditor, to be commenced in the local courts of insolvency, necessarily limited the operation of the language prescribing the jurisdiction. Any provision, general in its terms, may be limited, by some other provision of the same statute affecting its operation. This jurisdiction of the Supreme Court of Massachusetts, which is determined to be *original* jurisdiction, cannot be exercised until after a case is instituted in the local courts of insolvency, on account of the express provision requiring *all cases* to be first commenced there. But that court has fully recognised the rule, in the above cases cited by Messrs. Avery and Hobbs, in 4 & 8 Met. and 2d Cush., that in the exercise of this jurisdiction, it can grant relief under all circumstances, and in all cases, where not restrained by some other specific mode of relief prescribed in the statute. The same restriction operates upon the jurisdiction given to the Circuit Court in the 2d section of the Bankrupt Law, as to cases of *voluntary* bankruptcy, but not as to cases of *involuntary* bankruptcy, because the law has not specifically required them to be first instituted in the District Court. Here the matter stands; and upon the principles settled by the Supreme Court of

Massachusetts, in construing the Insolvent Law, the Circuit Court of the United States has concurrent original jurisdiction with the District Court, in cases of *involuntary* bankruptcy in the first place, and can take cognisance of such a case in its first commencement.

This view of the question is incontestably established by the 2d clause of the 2d section, which gives the Circuit Courts jurisdiction in cases commenced therein, "upon bill, petition, or other proper process." After conferring the superintendence and jurisdiction in the first clause, in the comprehensive manner above mentioned, the second clause follows, "and *except* when special provision is otherwise made (the Circuit Court) may, upon bill, petition or other proper process of *any party aggrieved*, hear and determine the case as a court of equity." The *exception* here made covers at least all cases of *voluntary* bankruptcy; for as to these, special provision is "otherwise made," in sect. 11, which requires them to be commenced in the District Court. The remedy is here given "*to any party aggrieved*," *in general terms*, which would reach the case of a creditor "aggrieved," by the fraud of his debtor. To limit this provision by interpretation to a party "aggrieved" by an erroneous proceeding in the District Court, would be interpolating a limitation, which neither its context nor its reason required. The provision in this particular in the Massachusetts Insolvent Law is different. The state statute of 1838 contains, in this provision, the following words: "upon the bill, petition, or other proper process, of any party aggrieved *by any proceedings under this act*," &c.: St. 1838, c. 163, § 16: 5 Allen 535. In the revision of the general statutes, the words, "*by any proceedings under this act*," appear to have been omitted. But the court said, in the case in 5th Allen, on page 534, that "this change in the phraseology in the general statute c. 118, § 16, did not change the substance of the former provisions." The appeal allowed was to the Superior Court, and limited to the cases of the allowance and the rejection of creditor's debts. And the provision expressly requiring all cases to be first instituted in the local courts of insolvency, substantially made the limitation, which the words omitted would make if retained. Under the Bankrupt Law, the appeal and writ of error, provided for in the 8th section, afford ample remedies for all grievances by erroneous proceedings after judgment in the Dis

trict Courts; and the superintending jurisdiction given in the first clause of section 2d, affords all the redress required for grievances arising from improper or irregular proceedings in the District Courts prior to judgment. So that this second clause of the section would be wholly superfluous, if limited to grievances arising from proceedings in the District Courts under this act.

And "*the case*" mentioned in the second clause of the 2d section, which the court is to "hear and determine as a court of equity," is, of course, "*the case*" made by the "bill, petition, or other proper process." A proceeding by bill, petition, &c., would make a case; and, as no other case is mentioned in this connection, the inference is irresistible that this must be the case meant.

It cannot be claimed, that this second clause was simply intended to prescribe the mode of procedure, to invoke judicial action under the superintendence given in the first clause. That is not the effect or import of the language used. The manifest object of the 2d section is to define the jurisdiction which it confers on the Circuit Court, and fix its limits; and it is not the purpose here to prescribe a mode of procedure. No such connection is expressed between the subject-matter of the provisions of the first and second clauses. The plain import of the language used in the latter clause is to confer, subject to the specified exception, *further* and *additional* jurisdiction; and the character of it is defined as a proceeding in equity "upon bill, petition," &c. The superintendence given in the first clause is, "*of all cases and questions arising under this act,*" *without reference to the distinction between cases at law and in equity, and not subject to the exception* expressed in the second clause. It would, therefore, be utterly preposterous to say, that the provision of the second clause was intended to prescribe the mode of procedure for the superintending jurisdiction given in the first clause. Subject to the exception as a mere mode of procedure, for the cases and questions of the superintending jurisdiction, it would not probably apply to the one-tenth part of them.

The fact that the Bankrupt Law has specifically required all cases of *voluntary* bankruptcy to be brought in the District Courts, but contains no such requirement as to cases of *involuntary* bankruptcy, implies that the latter were left to the concurrent original jurisdiction of the Circuit and the District Courts

Why was express provision made requiring the one of these two classes of cases to be brought in the District Courts, and none such made as to the other? It is true, that prior to the Bankrupt Law, no proceedings by debtors for their discharge from the obligations of their creditors existed, in the Federal courts; but proceedings upon bill, petition, and other proper process, by creditors, on account of the fraudulent devices, concealments, and conveyances of failing and absconding debtors, did exist, and could previously be maintained in the Federal courts; and constituted one of the important remedies within the jurisdiction of the Circuit Court. When a creditor residing in one state sought redress for the frauds of his debtor in another state, it was deemed important to afford him the benefit of the jurisdiction of the United States Circuit Courts. Is it reasonable to presume, that Congress intended to deprive the citizens of the different states of the advantage of this original jurisdiction of the Circuit Courts? The Bankrupt Law supersedes these previous remedies in equity. And had it been intended to strip the Circuit Court of this important jurisdiction, for the relief of creditors, against the fraudulent conduct of failing debtors, it is fair to presume, that an express provision would have been made in the Bankrupt Law touching this class of cases as well as those of voluntary bankruptcy.

It has been argued, that the language of the 2d section, which comes immediately after that part of the section above recited, is inconsistent with the position here insisted on, and which is as follows: "Said Circuit Courts shall also have concurrent jurisdiction with the District Courts of the same district, of all suits at law or in equity, which may or shall be brought by or against the assignee in bankruptcy," &c. This is an argument founded upon *emphasis*, and assumes that the emphasis is on the word "*concurrent*," thereby implying that the jurisdiction defined in the previous part of this section was not concurrent jurisdiction. But if the emphasis should be placed on the word "*also*" instead of the word "*concurrent*," the implication is equally as strong the other way, that is, that the jurisdiction defined in the second clause, which is the next preceding clause of the section, *is concurrent* jurisdiction. And the only way to determine on which of these words to place the emphasis, is first to ascertain the kind of jurisdiction defined in the preceding clause. Now, it

having been incontestably established, that the jurisdiction conferred by the next preceding clause, "upon bill, petition, &c., in equity," is in fact original jurisdiction, and, therefore, *concurrent*, the emphasis must be placed on the word "*also*," and thus, by implication, it sustains the true interpretation of the language used.

Again, it has been urged, that the language of the first section of the law, declaring that "the several District Courts are constituted *courts of bankruptcy*," is incompatible with the position here taken. What is meant by constituting the District Courts of the United States "*courts of bankruptcy?*" Does this phraseology invest these courts with jurisdiction in bankruptcy? If so, the language of the statute, which immediately follows it, is idle and superfluous; for it grants to the District Courts specifically and in express terms original jurisdiction in bankruptcy, and particularly authorizes them to hear and determine upon all matters in bankruptcy according to the provisions of this act, and, further, expressly extends the jurisdiction to all the matters and proceedings in detail of a case in bankruptcy, "until the final distribution and settlement of the estate of the bankrupt." Why all this particularity in conferring on the District Courts their jurisdiction, if constituting them "*courts of bankruptcy*" imported *exclusive* original jurisdiction of all matters in bankruptcy? Originally in England, *the courts of bankruptcy* were such as were held by the commissioners designated in the Lord Chancellor's commissions. The original jurisdiction was first entertained by the Lord Chancellor on the petition of the creditor, and after the commission in bankruptcy was granted, the proceedings were conducted before the commissioners under the superintendence and control of the Lord Chancellor. Under the statute of 1 & 2 W. 4, c. 56, a judicial organization was effected, termed "*The Court of Bankruptcy*," composed of four judges and six commissioners, and declared to be "a court of record of law and equity." The judges (afterwards reduced in number) held what was termed "*the Court of Review*," and the commissioners held what were termed "the Courts of Bankruptcy," under the superintendence of the Court of Review, administering the Bankrupt Law, in all its details of adjusting the claims of creditors, and settling the estate of the bankrupt. But under this change in the organization of the bankrupt courts, the original jurisdiction

began upon the petition of the creditor brought before the Lord Chancellor, and the issue of the *fiat* on his authority from the Court of Chancery. Exclusive original jurisdiction was never claimed for the courts held by the commissioners, on account of their being constituted "courts of bankruptcy." That peculiar denomination was given to them, because they were especially charged with the administration of the Bankrupt Laws, in the details of the adjustment of the claims of creditors, and the settlement of the estates of bankrupts. And constituting the District Courts of the United States, "Courts of Bankruptcy" cannot be taken as importing anything more than this.

The language of the first section, which gives the District Courts original jurisdiction, "in all matters and proceedings in Bankruptcy," &c., and "extends it to all cases and controversies arising between the bankrupt and any creditor or creditors," &c., does not import that it is *exclusive*. It is the ordinary language used in defining the jurisdiction of a court with which that of another tribunal may be concurrent. It extends the authority of the court to all matters and cases, in which its judicial power is to be exercised, when a proceeding is instituted invoking its action. The language employed does not preclude the exercise of concurrent jurisdiction by another court touching the same matters, when upon a proper proceeding it may be called into action. When a statute is intended to confer *exclusive* jurisdiction, words must be used which clearly import that meaning and intent. The District Courts are made courts of exclusive jurisdiction in some matters, but the language of the statute used to effectuate this is explicit and unequivocal, as follows, to wit: "The District Courts *shall have exclusive original cognisance* of all civil causes of admiralty and maritime jurisdiction," &c.: shall have also *exclusive original cognisance* of all seizures on land," &c.: "and shall also have jurisdiction, *exclusively* of the courts of the several states, of all suits against consuls," &c.: See Brightly's Dig. U. S. Laws 230 and 231; 1 vol. U. S. Stat. at Large, p. 76, § 9. Had it been the intention of the lawmaker, to make the original jurisdiction of the District Courts *exclusive* in all these matters in bankruptcy, to which it was extended in the first section, some such explicit language as that above mentioned would undoubtedly have been used.

The language of the Bankrupt Law of 1841, which prescribed

the jurisdiction of the District Courts, is not substantially different from that in which the jurisdiction of that court is defined in the present Bankrupt Law; but the language used to confer the jurisdiction on the Circuit Court, in the Bankrupt Law of 1841, is by no means as comprehensive and explicit as that of the law of 1867. And yet it was decided, that "the jurisdiction of the District Court, under that law, was not *exclusive*," but that "the Circuit Courts had *concurrent* jurisdiction *of any matter arising under the Bankrupt Law*, when the subject-matter was proper for a court of equity, and the parties such as the constitution and laws of the United States require:" *Lucas* v. *Morris*, 1 Paine's U. S. Circuit Court Rep. 396. It is reported to have been held, *McLean* v. *The Lafayette Bank*, 3 McLean's Rep. 185: "That, in all cases arising under the Bankrupt Law (of 1841), the Circuit Courts had concurrent jurisdiction with the District Courts." And in the case of *McLean* v. *Meline et al.*, 3 McLean's Rep. 199, it was held, "that the Circuit Court had jurisdiction in the case of a bill filed to set aside a conveyance of effects made in contemplation of bankruptcy, to set aside the transfer, direct the liens to be paid *pro rata*, and the property not levied upon to be distributed among the creditors of the bankrupt." And in the recent work of Mr. Edwin James, on the Bankrupt Law of the United States of 1867, the author, in his notes, on page 12, says:—

"Within and for the district where proceedings in bankruptcy are pending, the Circuit Courts have *concurrent* jurisdiction of all cases and questions in administration of bankruptcy under the act, *as courts of equity;* and have *concurrent* jurisdiction in all cases at law and in equity, to which the assignees, as plaintiffs or defendants, are parties, and in all matters concerning the estate and property of the bankrupt, vested in or claimed by them. The Circuit Courts of the United States have jurisdiction, under the Bankrupt Law, to set aside the transfer of property by the bankrupt in fraud of the law, and in the same proceeding, to direct that such property be distributed according to their legal rights among creditors having valid liens thereon."

The argument *ab inconvenienti* has been urged against the exercise of this jurisdiction by the Circuit Court. When the language of a statute is sufficient to confer clearly the jurisdiction, so that to deny it would render a part of the language used unmeaning and superfluous, the argument drawn from inconvenience may prove want of wisdom in the lawmaker, but it cannot justify judicial legislation: Smith on Constitutional and Statu-

tory Construction, p. 632; Broom's Legal Maxims 140 and cases cited. But is there any foundation in fact for this argument? This original jurisdiction is limited to cases of *involuntary* bankruptcy; and the proportion of them, which will seek this jurisdiction in the first place, will not probably exceed the number of cases in equity in the Circuit Court by creditors on account of the frauds of debtors, if no bankrupt law existed. And with the judicial aids provided by the Bankrupt Law for all cases in bankruptcy, by means of assignees, registers, &c., the Circuit Court could have no more difficulty in the adjustment of the claims of creditors, and collecting and distributing assets, than in the case of a creditor's bill, setting aside fraudulent transfers, marshalling assets and distributing the same, &c. In cases of involuntary bankruptcy the important contest in the litigation occurs prior to the adjudication in bankruptcy. After the adjudication the Circuit Court need have no further trouble in disposing of the case than by its superintending jurisdiction in cases in the District Court. But the District Court being constituted "a court of bankruptcy," and *as such* charged with all matters and proceedings in adjusting the claims of creditors, and settling the affairs of the bankrupt, a case in the Circuit Court, after the adjudication in bankruptcy, could very properly, under the very liberal provisions and ample authority in the law for regulating the practice by rules of court, be sent to the District Court as "the *court* of *bankruptcy*," for the balance of the proceedings. No inconvenience to the Circuit Court was found in the exercise of its concurrent jurisdiction, under the Bankrupt Law of 1841.

The utility and necessity of this jurisdiction of the Circuit Court is certainly greater now than was the chancery jurisdiction afforded to creditors prior to the Bankrupt Law. Lord HARDWICKE is reported to have said: "The new laws relating to bankruptcy have turned the edge of commissions of bankruptcy from being as they were originally, remedial to the creditor and in the nature of punishment to the bankrupt, whom they considered as an offender, to be the accidental occasion of great frauds:" Smith, Mont. Dig. 119; Hilliard on Bankruptcy, § 5. One object of the chancery jurisdiction mentioned was to afford creditors in another state a jurisdiction supposed to be less liable to be controlled by local influences than the court held exclusively by the local district judges. The subtlety of overreaching debtors,