IN FOREIGN LANDS.

Bismarck Trying to Use Austria to Serve German Ends.

HARD TIMES IN NOVA SCOTIA.

Families on the Brink of Starvation —English Racing Events— Mexican News.

[SPECIAL DISPATCHES TO THE RECORD-UNION.]

SUSPICIOUS AUSTRIA.

Bismarck's Diplomacy—The Czar Would Like British India.

LONDON, November 8th.—Already there are signs of dissensions in the new league of brotherhood, which was to offer perpetual security for the peace of Europe. The Emperor of Austria begins to have serious doubts whether he has not been used by Germany as a catspaw. The recent visit of William II. to the Sultan has evidently resulted in a good understanding between the Porte and Germany, and what is much more important, it is believed the meeting between the Emperor and the Czar at Berlin is likely to lead to very close relations between their Governments.

It is even stated that a marriage has been arranged between the Czarowitch and Princess Margaret of Prussia. If that be true the alliance which Austria made with Germany has tied the hands of the former power, while it has left Russia free to pursue her Eastern policy without fear of serious check.

This is a coup worthy of the fame and skill of Prince Bismarck. In the time of William I. Russia held aloof from Germany. The old monarch, on his deathbed, recommended his grandson to "keep on good terms with Russia," and it is not difficult to conceive by whom this advice was inspired.

During the brief reign of Emperor Frederick the general position was unchanged, but the pupil of Bismarck lost no time in endeavoring to carry out his preceptor's injunctions. Russia obstinately turned a deaf ear to his overtures. Then the triple alliance was formed, and the Czar saw he was in danger of having his flank turned by Austria. A lesser power was employed to lure the larger one into the net. When this end is secured it will not much matter whether Austria approves or disapproves of the use which has been made of her. She would not be able to move hand or foot against the will of the stronger powers.

It may well be that Russia has still larger designs in view. Some people appear to imagine that her Asiatic policy has come to its natural end and will be pursued no further. There are many persons in England who hold that view. Russia has not spent millions in extending her Asiatic frontier toward India, only to recede when she is within sight of the promised land. That is not the principle on which Russia or any other great power commonly acts. It is not the principle England herself adopted in India, or which she is at this moment adopting in Africa. To take all and give back nothing is the rule in such matters.

Fortified by a closer alliance with Germany, the Czar may come to the conclusion that the time is approaching for another forward move in the direction of British India. Meanwhile England is telling the natives they if they get up agitation enough they may rule their own country and supplant their former conquerors. Not by such methods was India won and not by such methods will it be retained. At a time when flabby sentimentality appears to be predominant in English parties it would not be surprising if the Czar sent one of his legions a little further toward the heart of British power in India, ready to strike when a fitting moment comes.

Starving Nova Scotians.

HALIFAX (N. S.), November 8th.—The reported distress among the fishermen at Terence Bay and Lower Pospect, West Halifax, is confirmed. Nearly half the population in each village are on the brink of starvation, owing to the failure of the fishing. There are twenty or thirty families in each place, numbering nearly 200 persons. They have consumed every scrap of food they could obtain. Provisions will have to be sent them or many will perish.

Canadian Uppertendom.

CHICAGO, November 8th.—The *Times'* Ottawa, Ont., special of the 7th says: In ignoring Minister of Finance Foster and his wife and excluding their names from the list of invited guests at Earnscliff today, Lady Macdonald has decreed that the Minister of Finance and his Chicago divorced bride shall not walk in the paths of uppertendom in Canadian society.

General Cortina Dying.

CITY OF MEXICO, November 8th.—The negro colonization bill passed the Senate yesterday.

General Cortina, once the terror of the frontier, is now dying.

Spanish steamers will soon begin running from Cadiz to Mexico and the Argentine Republic.

Barnum Banqueted.

LONDON, November 8th.—A banquet was given P. T. Barnum this evening. Among those present were Lord Randolph Churchill, Lord Charles Beresford, the Rothschilds, Sir John Fowler, George Augusta Sala and many others. Mr. Gladstone and Lord Aberdeen sent letters of regret.

English Racing.

LIVERPOOL, November 8th.—The Autumn cup, one mile and three furlongs, was won by Philomel, Revedor second, Theosophist third. It had twelve starters.

DR. WINSHIP.

A New Englander's Impressions of California—Colusa Teachers' Institute.

Dr. A. E. Winship of Massachusetts, who has been in the State some six weeks visiting Teachers' Institutes, was the guest of Superintendent of Public Instruction Ira G. Hoitt and wife yesterday, and left last night for his home in the East. Dr. Winship is one of the most prominent educators and public lecturers in New England. He has made three visits to California, remaining each time for some months. On his arrival in the East he will enter upon a lecture course, the engagements of which are all written up to the middle of March, and all of his lectures will be upon California.

Dr. Winship is a warm friend of the State, and has made observations in it from the Mexican border to the Oregon line, meeting the people, and especially teachers, in nearly every county. He has collected data that gives him material for a dozen lectures upon this State. He stopped over two hours last night at Auburn and attended a teachers' reception, as a special guest. At Willows, on Thursday night, the Teachers' Institute closed a session, which Dr. Winship and Superintendent Hoitt attended for some days, and a banquet was given at the close which was a social success and an intellectual feast. The event was made the occasion of the presentation to County Superintendent Wilson, by the teachers, of a gold watch and chain.

Superintendent Hoitt, in response to inquiries made yesterday, said that it was one of the most successful Institute sessions ever held in the State, and that he was more than surprised at the deep interest manifested by the people of that section in the public schools and in educational subjects. The lectures were so well attended that not all who wished could gain an entrance to the lecture-room, the largest in the place.

SUPERIOR COURT.

Department One—Armstrong, Judge.

FRIDAY, November 8, 1889.

Julius Panokin vs. William Jackson—Continued.

L. Elkus vs. M. G. Dandried—Continued.

Wittenbrock vs. Mcbius & Co.—Continued one week.

Babel vs. Babel—Continued one week.

In re Godfrey Politz, insolvent—Isador Cohn elected assignee; bond fixed at $.00.

In re Boon Wilson, insolvent—Petition to set aside personal property granted.

In re G. W. Sheppard, insolvent—Petition to set aside homestead submitted.

Hannah Dennery vs. A. Dennery—Motion to direct Sheriff to sell property under execution denied.

Department Two—Van Fleet, Judge.

FRIDAY, November 8, 1889.

Estate of R. A. Pearis, deceased—Letters of administration granted to W. J. Wallace; bond fixed at $100. G. P. Royster, E. H. McKee and P. H. Russell appointed appraisers.

Estate of John Doyle, deceased—Will admitted to probate; letters granted to C Heisen; bond fixed at $15,000 G. P. Royster, W. W. Rhoads and H. J. Goethe appointed appraisers.

Estate of W. J. Castle, deceased—Order settling final account and for distribution.

Estate of Jacob Miller, deceased—Order confirming sales of real and personal property.

Estate of A. S. Morrison, deceased—Order settling final account and for distribution.

Estate of R. Anderson, deceased—Order to take deposition.

Estate of S. Simonds, deceased—Letters of administration granted to Ellen Simonds; bond fixed at $100. D. Finch, C. H. Jolly and D. J. Simmons appointed appraisers.

Estate of P. Chatterton, deceased—Continued one week.

Estate of Elizabeth Bryte—Continued one week.

Estate of F. Appel, deceased—Contined one week.

Estate of I. J. Darling, deceased—Order made for sale of real estate.

Estate of B. A. Farr, deceased—Submitted.

Guardianship of J. C. Dillard, a minor—Letters issued to Dora Dillard; bond fixed at $1 500.

Guardianship of J. H. and A. M. Hooker, minors—Letters issued to Elizabeth H. Hooker; bond fixed at $3 000 for each minor. G. P. Royster, J. B. Gilbert and F. Perkins appointed appraisers.

Estate of M. Dart, deceased—Order confirming sale of personal property.

Estate of Fannie Carmody, deceased—Continued one week.

Estate of M. E. Acock, deceased—T. L. Acock appointed administrator; bond fixed at $3,000. Notice to creditors.

Estate of Annie Zeigler, deceased—Decree of notice to creditors made.

Estate of B. M. Richmond, deceased—Continued one week.

Estate of M. Richmond, deceased—Continued one week.

Estate of E. V. Brown, deceased—Order setting account.

J. Gaynor vs. Hannah Rigney—Continued one week.

F. J. Moore, Jr., vs. J. McNeil and D. W. Farl—Continued one week.

Clotilda Gordon vs. James M. Condry—Continued one week.

W. H. Bagwell vs. Ah Sing—Judgment set aside.

Hannah Dennery vs G. C. McMullen—Motion to set aside order overruling demurrer denied.

M. S. Nevis vs. M. J. Azeveda—Ordered that complaint be amended and demurrer withdrawn.

L. E. Armstrong vs. Hattie Armstrong—Defendant allowed $25 per month alimony, $25 for costs and $50 for attorney's fees.

Washburn vs. Garrett—Three cases continued by consent.

SOCIAL AND PERSONAL.

John W. Miller, of Placerville, is in town.

John H. Finlay was down from Forest Hill yesterday.

Mrs. Byron H. Hulburd goes to Placerville today to visit her relatives.

Mrs. James Holland has returned from a two months' visit in the East.

Frank Miller, one of the Supervisors of El Dorado county, is in the city.

Senator Thomas Fraser, of El Dorado county, came up from the bay last night.

Dr. C. G. Spencer, of Georgetown, El Dorado county, was in the city yesterday.

Senator Sprague and F. C. Pendergast, of Woodland, arrived in the city yesterday.

The engagement is announced of Mrs. Theresa Coleman, of this city, and Julius Phillipson, of San Jose.

Congressman Joseph McKenna was in the city yesterday, and was warmly received by his old friends.

Mrs. C. H. Dunn, Ed. F. Smith and wife, Chief of Police Lee, Charles T. Jones and A. Scheunert came up from San Francisco last evening.

Arrivals at the Capital Hotel yesterday: J. Danielwitz, San Francisco; W. S. Robinson, Grass Valley; Mrs. E. W. Towle, Miss Hattie Robie, Lincoln; J. H. Stewart, Alturas; B. Norris, M. D., San Francisco; John H. Trayner, Marysville; J. W. Hagan and wife, New York; H. J. Hutchinson, George Pearson, G. A. Templeton, Los Angeles; G. K. Smith, Biggs; J. R. Stephens, J. W. Blair, Placerville; James H. Darwin and wife, Yuba; C. J. Spencer, Georgetown; S. O. Wells, Reno; A. G. Summers, Miss Summers, Miss Wildermont, Dixon; Thomas Fraser, Placerville.

Arrivals at the Golden Eagle Hotel yesterday: George Williams, L. E. Lee, Reno; Miss Jennie R. Doyle, Carson; John W. Dunne and wife, Jas. Goodman, New York; F. L. O. Nichols, Baltimore; Burt Haverly, Wm. Caleber, Miss Alice Finck, Miss Belle Stoddard, J. W. Olive, New York; W. S. Bowne, Santa Cruz; G. B. Stiles, W. T. Fitzgerald, Reno; G. A. Prerie, Iowa; R. G. Thornton, Richmond; J. W. McClessy, Minnesota; J. W. Hoagan and wife, New York; W. M. Gibson, Stockton; F. Sprague, C. M. Pendegast, Woodland; J. A. Anderson, Wisconsin; John W. Slavin, Oakland; Mrs. L. Morton, A. Cohn, M. S. Bronstein, M. E. Frank, San Francisco.

SUNDAY RELIGIOUS NOTICES.

Westminster Presbyterian Church, corner Sixth and L streets.—Pastor, Rev. J. E. Wheeler. Preaching at 10:45 A. M. and 7:30 P. M. Sunday-school, at 12:30 P. M. Young people's meeting at 6:30 P. M. Every one welcome.

United Brethren, corner Fourteenth and K streets—Presiding Elder W. C. Day, D. D., will preach at 11 A. M. and 7:30 P. M. Quarterly meeting Saturday evening at 7:30. Sunday-school 9:45 A. M. A kindly welcome to all. *

First Christian Church, Eighth street, between N and O—Preaching at 11 A. M. and 7:30 P. M. At the evening service A. M. Growden will preach the first of a series of sermons on "The Life and Times of the Apostle Paul." Young people's meeting at 6:45 P. M. Sunday-school at 9:45 A. M. Pastor's Bible class at 10 A. M. *

English Lutheran—Preaching in Pioneer Hall Sunday at 3:30 o'clock by Rev. W. S. Hoskinson. *

First Baptist Church—J. C. H Read, pastor—Services at 10:45 A. M. and 7:30 P. M. Morning subject, "Divine Sympathy;" evening topic, "Christ's Jewels." *

Sixth-street M. E Church, between K and L streets—Rev. Arnold T. Needham, pastor. Preaching at 10:45 A. M., "Hindering the Gospel;" 7:30 P. M., "Wise Wives and Foolish Husbands;" 6:30 P. M. Epworth League. *

St. Paul's Episcopal Church, Eighth street, between I and J, Rev. John F. von Herrlich, rector. Services at 11 A. M. and 7:30 P. M. The vesper service of last Sunday evening will be repeated. Sunday-school at 12:45. Mission School at 1 P. M. *

Central M. E. Church, Eleventh street, between H and I—Rev. C. H. Beechgood, pastor. Services at 10:45 A. M. and 7:30 P. M. Subjects: "Youth" and "Scandalism." Sabbath-school, 12:15 P. M. Young people's meeting at 6:30 P. M. Strangers always welcome. *

First Unitarian Society, Knights of Pythias Castle, northwest corner of Ninth and I streets. Preaching by Rev. C. P. Massey, at 11 A. M. Subject: "The Rationalists' Mistake." The choir will render the following music: Quartet, "To Our Redeemer's Glorious Name" (Wilson); trio, "I Will Thank Thee" (Morcadante); quartet, "Seek Ye the Lord" (Baumbach), and soprano solo, "Ave Maria" (Millard). Sunday-school at 12:30. All welcome. *

M. E. Church South, Seventh street, between J and K—Preaching by the pastor, Rev. A. C. Bane at 11 A. M.: "An Object Lesson;" at 7:30 P. M., "The Fate of Our Popular Young Man." Sunday-school, 12:15. Young people's meeting at 6 P. M. *

Union Hall, corner Twentieth and O streets—Praise service at 7 P. M. Preaching at 7:15 P. M. by Mrs. E. M. Carley. Subject: "Does God Answer Children's Prayers?" *

Fourteenth-street Presbyterian Church, between O and P. Rev. G. P. Tindall, pastor. Services at 11 A. M. and 7:30 P. M. Sunday-school at 12:30 P. M. Young people's meeting 6:30 P. M.*

Emmanuel Baptist Church, Twenty-fifth and N streets—Services at 11 A. M. and 7:30 P. M. Evening subject: "Miracles and Their Purpose." Sunday-school at 12:15. *

Congregational Church, Sixth street, between I and J—The pastor, Rev. W. C. Merrill, will preach at 10:45. Subject: "Common Sense in Religion." Sunday-school, 12:15. Mission, Twenty-third and K, 3:30 P. M. Christian Endeavor in lecture-room at 6. All welcome.

Services at the A. M. E. Church at 11 A. M. and 7:30 P. M. Revival meeting and preaching every night next week by Rev. McIntosh, of Zion Church, San Francisco. O. Summers, pastor. *

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AN IMPORTANT CASE.

DECISION AND OPINION OF THE COURT IN THE DENNERY CASE.

Relation of a Prior Judgment to a Proceeding in Bankruptcy—It Cannot be Preferred to Other Claims.

Judge Armstrong yesterday rendered the following decision in the Dennery case. The case has attracted much attention, and has excited great interest among lawyers and business men. We present first a syllabus of the points ruled upon, and next the full text of the opinion of the Court, which will be found of special interest:

SYLLABUS.

A proceeding in insolvency is pending in the Superior Court. It is by his creditors against A. Dennery. The Sheriff was appointed receiver pending proceedings. The wife of the insolvent, who had prior to the institution of proceedings, obtained judgment against him for money, and who had taken out an execution, moved the Court to order the Sheriff to sell the property of the insolvent notwithstanding the insolvency proceedings.

On this issue the Court holds that a proceeding in insolvency vests the Court in which it is pending with full power and jurisdiction to control the entire property and estate of the insolvent. That it would be inconsistent with this power, and in contempt of the authority of the Court, for an officer holding an execution to proceed to enforce the same against the insolvent pending the proceedings. That the assignee in bankruptcy must dispose of the entire assets, and the Court will distribute the proceeds according to the equities of the several creditors.

The motion is therefore denied.

THE OPINION OF THE COURT.

In the Superior Court of the county of Sacramento, State of California, Department One—Before Armstrong, J. Dennery plaintiff, vs. Dennery defendant. The plaintiff, by her counsel, now moves the Court for an order directing the Sheriff, George C. McMullen, to proceed and sell the stock of goods of the defendant under an execution in his bonds issued on a judgment in favor of the plaintiff against the defendant in this case. A notice was served on the Sheriff of this motion and he appears by his counsel to show cause against the motion. The facts of the case, material to the determination of the motion, are these: On the 19th day of August, 1889, the plaintiff recovered judgment by default against the defendant for the sum of $12,595 20. On the same day the execution was issued thereon, put into the hands of the Sheriff, and levied by him on the stock of goods in question. But on the 22d day of the same month certain creditors of the defendant duly instituted proceedings in involuntary insolvency against him: and, thereafter, upon a sufficient petition filed for the purpose, the Court appointed said George C. McMullen, the Sheriff, as the receiver in the insolvency proceedings, to take possession of and safely keep the property of the defendant until the further order of the Court: and, that at the same time the Court made a further order that the Sheriff stay all proceedings under the execution till the further order of the Court. Both of those orders remain in full force and effect. In the petition for the order appointing a receiver it was averred that the plaintiff was the wife of the defendant; that she had no visible means other than such as she might realize from her judgment and execution; that her claim against him was sham and fictitious; that at the time the action was commenced he was insolvent; that she knew it; that at the time the complaint was filed the plaintiff procured an attachment to issue in the action; that it was not delivered to the Sheriff for service; that it was not intended to be served when procured, but was intended to be the means of preventing the fact that the suit had been commenced from being made public; that the summons was not served by the Sheriff; that the judgment was suffered by the defendant, and procured by the plaintiff with the intent to evade the provisions of the Insolvent Act, and of transferring all of his property to the possession of plaintiff; and other circumstances are averred in the petition tending to show fraud and collusion between the parties. If the averments of the petition are true, then the judgment and execution are a fraud upon the other creditors of the defendant, and for the purpose of the decision of this motion the Court must assume them to be true.

But the counsel for the plaintiff attacks the jurisdiction of the Court to make and enforce those orders in the course of the proceedings in insolvency; but the position of counsel cannot be sustained.

The Constitution and Code of Civil Procedure vest original jurisdiction in the Superior Courts "of proceedings in insolvency:" (Constitution, Article VI., Section 5; C. C. P. 76) and the jurisdiction of the Court attaches in cases of involuntary insolvency when the petition properly verified is filed, and served, with a copy of the order to show cause, upon the insolvent debtor (Luhrs vs. Kelly, 67 Cal. 289; Arnold vs. Kahn, 67 Cal. 472); and all the creditors of the insolvent, as well the secured as the unsecured, become and are, by virtue of the insolvency, parties to the proceedings; and they and their debts are brought under the jurisdiction and control of the Insolvent Court; and such jurisdiction and control exist and may be enforced as well before as after the proof of debts. This doctrine is sustained by numerous and well-considered cases, among which are the cases of P. Phelps vs. Selleck, 8 N. B. R., 590; Watson vs. The Citizens' Savings Bank, 11 N. B. R. 161, and Goodall vs. Tuttle, 7 N. B. R. 198, and Marsh vs. Armstrong, 11 N. B. R. 125.

Then the plaintiff as a creditor is a party to the insolvency proceedings. All the property of the insolvent debtor except such as is exempt from execution vests in the assignee by the assignment (Insolvent Act, Section 17); and the assignee is required to take possession of all such property except as is exempt from execution, and he may redeem all incumbered property from *valid* liens and sell the property under the order of the Court, (Section 21), and in case he fails to redeem, and there is no agreement between him and the creditor where the property is worth less than the debt, then the property should be transferred in satisfaction to the extent of its value, or if the property is worth more than the debt and the creditor paid the excess, then the assignee should release the property to the creditor; but if no agreement, then the Court must direct a sale according to Section 44, and when the property is reduced to money it must be distributed, first according to priorities, and secondly, to the general creditors *pro rata*. It follows from these and other provisions of the Act that the Court has full jurisdiction to administer the estate and to determine the validity and extent of all liens. The Supreme Court, in the case of Tafts vs. Manlove, 14 Cal 52, said: "It is observable that the statute contemplates the double purpose of discharging the debtor and of distributing the assets among his creditors. He is allowed too, by the statute, a provision out of the property. The Court having jurisdiction of the subject has control over the estate as a portion of the subject of its litigation. The whole property of the bankrupt may be considered as in its custody and within its control. The proceedings at least in its preliminary stages is more in the nature of a proceeding *in rem* than *in personam*." And in line with the principle here announced, the Court in considering the extent of jurisdiction of the United States Bankruptcy Court, by virtue of Section 5075 of the United States bankruptcy law, which is in the exact words of Section 44 of our Insolvent Act, in the case of Levy vs Hoake (53 Cal., 267, S. C. 18, N. B. R., 541), said: "The jurisdiction in Courts of bankruptcy extends to all cases and controversies arising between the bankrupt and any creditor or creditors who claim any debt or demand under the bankruptcy; to the collection of all the assets of the bankrupt; to the ascertainment and liquidation of the liens and other specific claims thereon; to the adjustment of the various priorities and conflicting interests of all parties; and the marshaling and disposition of the different funds and assets, so as to secure the rights of all parties and due distribution of the assets among all the creditors; and to all such matters and things to be done under and by virtue of the bankruptcy, until the final distribution and close of the proceedings in bankruptcy." The question as to the jurisdiction of the bankruptcy Court to ascertain and determine the validity and extent of the liens and to decree a sale of real property in satisfaction in summary proceedings in bankruptcy was involved and determined in favor of the jurisdiction in that case. And in *ex parte* (Foster 2, Story 140) the great equity Judge, Story, in delivering the opinion of the Court, said: "I lay it down as a general principle that the District Court is possessed of the full jurisdiction of a Court of equity over the whole subject matter which arises in bankruptcy, and is authorized by summary proceedings to administer all the relief which a Court of equity could administer upon a regular bill and regular proceedings instituted by competent parties." The same principle was announced by the Supreme Court of the United States, the same learned Judge delivering the opinion, in *ex parte* Christy, 3 How. 321; and upon many other occasions the same principle has been acted upon by other Courts. Russell vs. Cheatham, 8 S. M., 708; Bill vs. Beckwith, 2 N. B. R., 241. In Stewart vs. Hines, 6 N. B. R., 420, the Court decided that the commencement of proceedings in insolvency by virtue of law supersedes all process in the hands of the officers of other Courts, and that all claims against the bankrupt's property can only be enforced in the Court of Bankruptcy during the pendency of the proceedings; and in *in re* Kirkland, 10 Blatch. 515, the Bankruptcy Court adjudicated the question of a mortgage lien and decreed a sale of the incumbered property; so *in re* Mallory, 6 N. B. R., 22, the Court in the insolvency proceedings enjoined the Sheriff from making sale under execution levied before the adjudication in bankruptcy; and the same proceedings were had in Samson vs. Burton, 4 N. B. R., 1; in Samson vs Burton, 6 N. B. R., 403; in Samson vs. Lake, 6 N. B. R, 410, and in McLean vs. Buckingham, 3 McLean, 185. So it was held *in re* Devon, 16 N. B. R., 56, that the Bankruptcy Court had exclusive jurisdiction to determine the validity of a mortgage lien and decree a sale of the incumbered property in satisfaction of it. So it was decided in the case of *in re* Philo R. Sabin, 18 N. B. R., 151. So *in re* Holland, 12 N. B. R., 406, which was an involuntary proceeding in bankruptcy, the Court restrained a party from disposing of or transferring property which had been fraudulently transferred to him by the insolvent debtor. But it was claimed at the argument that the case of Marshall vs. Knox, 8 N. B. R., 94, decided that the Bankruptcy Court had not jurisdictional control of the property of the bankrupt where it was incumbered with a lien. The question was not necessarily involved in the case. In that case the property decreed by the Bankruptcy Court to be sold was the joint property of two partners. They were partners; the landlord had a lien on the whole property for his rent. He destrained according to the law of Louisiana, the Sheriff taking possession of the property in the proceedings. One of the partners was adjudged a bankrupt. The landlord was entitled to have the entire property subjected to his lien for rent, and as the solvent partner could not be made a party to the bankruptcy proceedings the Court had no jurisdiction of the case in the bankruptcy proceeding. This view fully harmonizes this case with all the cases we have referred to; but if this view cannot be maintained, then the case is in conflict with the whole current of authority upon the subject. In addition to the authorities cited, we cite the following cases in support of the jurisdiction of the Court in insolvency proceedings, as stated in Levy vs. Hoake, and other cases cited: (*In re* Wallace, 2 N. B. R., 134; Adams Equity, 199; Halford vs. Gillow, 13 Sim., 44; Morkan vs. Heany, 12 N. B. R., 484; *In re* Vogel, 2 N. B. R., 432; *In re* Barrow, 1 N. B. R., 481; *In re* Smith, 2 N. B. R., 297; *In re* Morks, 2 N. B. R., 575; *In re* The People's Mail Steamship Company, 2 N. B. R., 553; Foster vs. Ames, 2 N. B. R., 455; Jones vs. Leach, 1 N. B. R., 595; *In re* Kerosene Oil Company, 2 N. B. R., 528; Davis vs. Anderson, 6 N. B. R., 145; Reed vs. Bullington, 16 N. B. R., 408; Sutherland vs. Lake Superior Ship Canal Railroad and Iron Company, 9 N. B. R., 312. *In this case the case of Marshall vs. Knox was learnedly and severely criticised by a most eminent Judge.* And while he conceded that the decision upon the facts in that case, but not the reasoning of the Court, can be sustained upon the principle that where the Federal Courts and the State Courts have concurrent jurisdiction, the Court first acquiring jurisdiction over specific property will retain it; yet the Court held that where the property of the bankrupt is in the hands of the officers of the Federal Courts the law of comity does not apply, and the bankruptcy Court will draw within its jurisdiction and control all the estate of the bankrupt, and take it out of the possession of the officers. (*In re* Campbell, 17 N. B, R. 5; Beckman vs. Dunn, 16 N. B. R., 470) Many of these cases hold that the jurisdiction of the insolvent Court is exclusive over the affairs of the insolvent debtor, and the others hold that the jurisdiction is concurrent with the other Courts. That the insolvency Court has jurisdiction over the creditors and estate of the insolvent debtor cannot be denied in the face of the Constitution, statute and the current of the authorities, and the only question is one of procedure in the exercise of the jurisdiction given by the Constitution and the statute, and this question is solved by Section 187 of the Code of Civil Procedure, which provides that when jurisdiction is, by the Constitution or this Code, or *by any statute*, conferred on a Court or judicial officer, all the means necessary to carry it into effect are also given, and in the exercise of this jurisdiction, if the course of proceedings be not specifically pointed out by this code, *or the statute*, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code. This provision of the code empowers the Court in insolvency proceedings to adopt any mode of procedure conformable to the spirit of the Code and in analogy to the mode of procedure in probate proceedings, the jurisdiction of the Court in insolvency proceedings may be moved to an active exercise over any matter in course of the administration of the estate by petition, citation and answer. But as means of protecting and preserving the property, pending the proceedings in involvency, prior to the appointment of an assignee Section 63 of the Insolvent Act provides for the appointment of a receiver with all the powers of a receiver in a Court of equity. This section is as follows: "A receiver may be appointed by the Court in which an insolvent proceeding is pending before the election of an assignee: 1. Upon the applications of creditors when it is shown that the property or any portion thereof is in danger of being lost, removed or materially injured. 2. In all other cases where receivers are appointed by the usage of Courts of equity. And thereupon the appointment, oath, undertaking and powers of such receiver shall, in all respects, be regulated by the general laws of the State applicable to receivers." It follows, therefore, that Section 568 of the Code of Civil Procedure is applicable to proceedings in insolvency, and it provides that "the receiver has, under the control of the Court, power to bring and defend actions in his own name, as receiver; *to take and keep possession of the property;* to receive rents, *collect debts*, compound for and compromise the same, to make transfers and generally to do such acts respecting the property as the Court may authorize." These statutory provisions confers the same jurisdiction upon the Court of insolvency to take and keep possession of property that is conferred upon a Court of equity. The principle upon which Courts of equity act in appointing receivers is well stated in 2 Story Equity Jurisprudence, Section 829, thus: "The appointment of a receiver, when directed, is made for the benefit and on behalf of all the parties in interest, and not for the benefit of the plaintiff or of the defendant only. It may be granted in any case of equitable property upon suitable circumstances. And where there are creditors, annuitants and others, some of whom are creditors at law claiming under judgments, and others are creditors claiming upon equitable debts, if the property be of such a nature that if legal it may be taken in execution, it may, if equitably, be put into the possession of a receiver, to hold the same and apply the profits, under the direction of the Court, for the benefit of all the parties according to their respective rights and priorities. The same rule applies to cases where the property is legal, and judgment creditors have taken possession of it under a writ of *elegit;* for it is competent for the Court to appoint a receiver for annuitants and equitable creditors, not disturbing the just prior rights of any of the judgment creditors. Hence the appointment of receiver in cases of this sort is often called an equitable execution." The difference between a common law writ of *elegit* and an execution is, that under the former the possession of real property is taken and held until the rents and profits pays the debt; but under the latter the title to the property may be sold in satisfaction of the debt. And a Sheriff may be required to turn over to the receiver appointed by a Court of equity or Insolvency Court, property levied upon by him under an execution or writ of attachment; but the receiver hold the property subject to the lien of the levy if a lien exists, or if the property is sold by the receiver under the order of Court, the lien, if valid, attaches to the proceeds. (Von Roun vs. The Superior Court, 58 Cal. 399; Becker vs. Torrance, 31 N. Y. 641; Davenport vs. Kelley, 42 N. Y. 193) And the powers of the Receiver appointed in involuntary proceeding in insolvency is not suspended during an appeal (*In re* The Real Estate Association, 58 Cal. 356.) In the case of *ex parte* Cohn & Jones, 5 Cal. 496, the Court said: "Courts of equity unquestionably have the power to appoint receivers, and to order them to take possession of the property in controversy, whether in the immediate possession of the defendant or his agent, and in proper cases they can also order the defendant's agents or employees, although not parties to the record, to deliver the property to the receiver. This power does not conflict with the provisions of law which provides that no man shall be deprived of his property without due process of law. The surrender to the receiver does not affect the right of property or the ultimate decision of the case any more than does the levy of an attachment. The design is to secure the property so that it may be handed over to the party who shall be adjudged entitled to its possession." The principle involved in *ex parte* Cohen & Jones is approved in High on Receivers, Section 144, and the learned author adds: "And the order for the surrender of the property to the receiver may, if necessary, be enforced by process of attachment." And in Section 4 of the same author the principle is stated that: "A Court of equity, by its order appointing a receiver, takes the entire subject matter of the litigation out of the control of the parties and into its own hands, and ultimately disposes of all questions, legal or equitable, growing out of the proceeding. And the possession of the receiver being the possession of the Court appointing him, any attempt to disturb such possession without leave of the Court may be treated as a contempt of Court, and punished accordingly." (High on Receivers, Sections 163, 164, 165) The remedy of a party who claims an adverse interest in the property is stated in 2 Story Equity Jurisprudence, Section 833, where he says: "In the next place, when such a receiver is in possession, under the process or authority of the Court, in execution of a decree or decretal order, his possession is not to be disturbed, even by an ejectment under an adverse title, without leave of the Court. For his possession is deemed the possession of the Court, and the Court will not permit itself to be a suitor in a Court of law. The proper and usual made, adopted under such circumstances, is for the party claiming an adverse interest to apply to the Court to be permitted to come in and be examined *pro interesse suo*. He is then allowed to go before the master and to state his title, upon which he may, in the first instance, have the judgment of the master, and ultimately, if necessary, that of the Court." It seems to be well settled that when a party claims a right to or lien upon property in the hands of a receiver, he must apply to the Court who appointed the receiver either for leave to sue him or for relief, and the Court will grant the one or the other, as justice may require. (High on Receivers, Section 129-150.)

It was contended at the argument that the case of *ex parte* Hollis, 59 Cal., 405, was opposed to the jurisdiction of the Court to appoint a receiver over the property of the defendant in this case which had been levied upon under plaintiff's execution; but it is not so. In that case the legal title and adverse possession was in Hollis. He was not a party to the insolvency proceeding. But in this case the legal title is in the insolvent, and the plaintiff, as a creditor, is a party to the insolvency proceedings, and it was assumed in that case that if Hollis had been a party to the proceedings or an officer of the Court, that the Court would have had the authority to take possession of the property through a receiver. The Court had in this case to appoint the receiver and take possession of the property through him, for three reasons:

First—Legal title to the property is in the insolvent, even though there may be a lien thereon under the levy of the execution, and hence the jurisdiction of the Court.

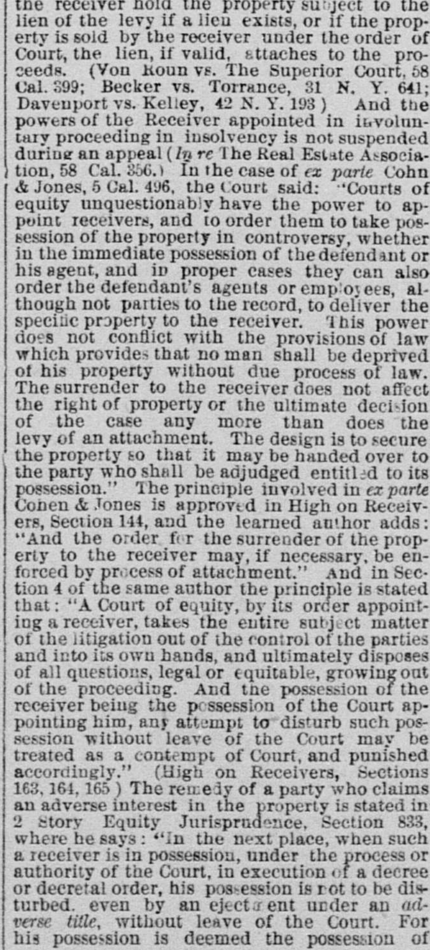
Second—The plaintiff, as a creditor, is a party to the insolvency proceedings, and therefore within the jurisdiction of the Court. And

Third—The property was in the possession of the Sheriff, an officer of the Court, under its process, and the Court has power to control its process and the acts of its officers under it. These propositions are sustained by the authorities referred to in this opinion.

If the Court has not the power to take and preserve this property, pending the proceedings to determine whether the defendant is insolvent within the meaning of the Insolvent Act, and whether the execution is fraudulent, then, indeed, its process may be used to consummate a fraud; and then, in that event, the Court and its process may be said to be potential for evil and powerless for good. But such a result would be a reproach to the administration of the law, and I am not willing to concede such a reproach, and therefore the motion of the plaintiff is denied. Let an order be entered accordingly. JOHN W. ARMSTRONG, Judge.

New Telegraph Line.

The Excelsior Telegraph Company yesterday filed articles of incorporation in the office of the Secretary of State. The object of the company is to carry on a general telegraph and telephone business. The telegraph line is to extend from Marysville, by way of Smartsville, to Grass Valley, the estimated length of which is thirty-six miles. The principal place of business is at Smartsville, Yuba county. The capital stock is $4,000, all of which has been subscribed. Directors—W. J. Stewart, Oakland; Edward Wheaton, San Francisco; H. B. Wheaton, J. N. Flint and E. H. Brown, of Smartsville.



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NEW YORK. CHICAGO. SAN FRANCISCO.

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NEW ADVERTISEMENTS.

BIDS WILL BE RECEIVED TO LAY A CEMENT or asphalt sidewalk, 80x160 feet, at southeast corner Nineteenth and L streets. Address JOHN EITEL, 317 J street. 1t*

THE REGULAR SEMI-ANNUAL COURSING Match of Sacramento will take place on SUNDAY, November 24th. Entrance fee, $5 each. Nominations will close THURSDAY, November 21st. Drawing of dogs FRIDAY EVENING, the 22d inst, at the Windsor Hotel. The match open to the state. Entries received by FRED NEARY, Windsor Hotel. n9-3t

Popular Sermon by Rev. A. C Bane,

AT THE SEVENTH-STREET M. E CHURCH South, next SUNDAY EVENING. Subject: "The Fate of Our Popular Young Man." 1t*

SPECIAL NOTICE.

ALL CARS OF THE CENTRAL STREET Railway will run to the Ball Grounds, Twenty-eighth and R streets, after 1:30 P. M. SATURDAY and SUNDAY. Two swing cars will run from Twenty-eighth and R streets to South Sacramento. 1t

SINGING SCHOOL.

R. B. POTTER WILL FORM A CLASS FOR beginners MONDAY EVENING. A simple and thorough method will be taught. SATURDAY AFTERNOON, at 2 o'clock, a class for children will be formed. Everybody invited. Presbyterian Church parlors, Sixth and L sts. 1*

CHRYSANTHEMUM FAIR

AT WESTMINSTER PRESBYTERIAN Church, corner Sixth and L streets,

THIS (Saturday) EVENING.

Choice programme this evening; lovely flowers; attractive booths. Admission, adults 25 cents, children 10 cents. n2 7t

A SOCIAL DANCE

WILL BE GIVEN AT Y. M. I. HALL. BY the Y. L. I., No. 17, MONDAY EVENING, November 11th. Music by Church & Watson. Admission, 25 cents. n8-3t

REMEMBER THE ORPHANS!

AN ENTERTAINMENT, NOVEL, MERITORIOUS and superior, will be given in the new Knights of Pythias Castle Hall, for the benefit of the Good Templars' Home for Orphans, on MONDAY EVENING, November 25th. Programme and particulars hereafter. n9-2t

GRAND OPENING BALL

—WILL BE GIVEN AT—

Halverson's New Hall, Hangtown Crossing, Thursday Evening, Nov. 14th.

MUSIC BY JONES, BEEBE & HAND. THE Suburban Train, which leaves Sacramento at 5:20 P. M., returns at 6:20 A. M., thus giving everybody a chance to attend, and return in time for business in the morning.

Tickets (including supper), $1 50.

J. HINTERS & A. SWANSON, Proprietors. n9,12,13,14

WANTED.

10.000 DEER SKINS. WILL PAY THE highest price. Or tan them on shares. Will also make the best Gloves in the State. Call for DODGE'S GLOVES, and take no other. Factory, 1017 Ninth street, Sacramento, Cal. Dodge's Sacramento Glove Factory and Tannery. [4ptf] P. H. DODGE, Proprietor.

A GREAT SAVING

—TO—

Purchasers of Clothing

H. MARKS, THE PROPRIETOR OF THE MECHANICAL STORE, calls the attention of the public to his prices, and guarantees that he can satisfy all customers in the quality of Clothing goods as well as in lowness of price.

A glance at our prices below would convince one:

White Dress Shirts, from 50 cents upwards.
First-class Shoes (brogans), from 75 cents upwards.
Lace or Gaiter Shoes, from $1 15 upwards.
Nice line of Hats, from 50 cents upwards.
Also, Children's Hats, from 15 cents upwards.
Overcoats, from $3 50 upwards.
Heavy Chinchilla Coats and Vests, from $6 upwards.
Business Suits, from $3 upwards.
Heavy Cotton Moleskin Pants, from 75 cents upwards.
Good Working Shirts, from 35 cents upwards.

The Farmers' trade solicited.

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W. H. SHERBURN,

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NO. 323 K ST., SACRAMENTO.

Lowest rate of commission on sales of real estate or goods sold outside of salesroom.

THIS AND EVERY EVENING,

Until January 1, 1890,

A FINE LINE OF GOLD AND SILVER Watches, Solid Gold and Plated Jewelry, Fancy Goods, Notions, etc. I have a consignment of all of the American manufacturers, including Howard, Elgin, Waltham and Springfield, Gents' and Ladies' Solid Gold and Filled Cases, all grades. Jewelry in endless variety, Ladies' and Gents' Chains, etc.

Auction Sale Every Evening at 7 o'clock. Private sale during the day.

All goods guaranteed as represented, or money refunded.

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ADVERTISEMENT OF HALE BROS. & CO.

TO-DAY.

SPECIAL:

Children's Cloaks.

We present a bargain TO-DAY in CHILDREN'S CLOAKS that will be of special interest on account of the LOW PRICE.

There are two styles, and ages run from 4 to 14 years in each. Although the cost increases with the size, we shall place all sizes and both styles on sale at the single price of

$1 75.

One style of Cloak is in a Fancy Pencil Stripe; the other shows a Broad Brown Stripe, through which runs a Hair-line Plaid. Both have shirred backs and double-breasted fronts. All this season's goods. Come early and get your size.

HALE BROS. & CO.,

Corner Ninth and K streets,

SACRAMENTO ....CAL.

OUR STORES CLOSE THIS EVENING AT 9 O'CLOCK.

ITEMS IN

FURNISHING GOODS.

OVERSHIRTS.

Union Cassimere Overshirts, made with shield bosom or plain button front. Cut full size. Heavy weight. A special value at 95 Cents.

Heavy Moleskin Overshirts, 75 cents.

HOSE.

Men's seamless Woolen Hose in Natural Gray or Scarlet. Extra value at 25 cents.

FULL-DRESS SHIRTS.

The newest style and the correct style of Full-Dress Shirts has an extra wide and long bosom, and a plain front. Price, $1 50.

GLOVES.

Fine Cloth Gloves, 50c.

Fur-trimmed and spring top Gloves, $1.

DERBY HATS.

We have never handled any hat for $2 50 as good as the line we show this season. We have it in large, medium and small shapes, and the style is as good as in higher-priced Hats.

HALE BROS. & CO.,

Corner Ninth and K streets,

SACRAMENTO ....CAL.

ALL-WOOL LADIES' CLOTH, 36 inches wide,

40 CENTS PER YARD.

HEAVY ALL-WOOL DRESS GOODS,

45 CENTS PER YARD.

A Complete Assortment of Black Braided Dress Trimmings, Fringes and Gimps, Black Silk Dress Fronts, Sashes, etc.

SPECIAL JOB LOT OF CLOAKS AT 25 CENTS, 50 CENTS $1, $1 50.

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Our First Word is BARGAINS!

And all from a Practically Unlimited Line of Bright New Styles for Fall and Winter. Facts and Figures Convince all Comers that we offer the OPPORTUNITY OF THE SEASON IN GENTEEL CUSTOM-MAKE

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The Stock is made up of the Truly New, the Really Nice, and the Thoroughly Genteel in Styles and Fashion. THE LOWEST PRICES YET NAMED FOR EQUAL VALUES.

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NOT IN PRICE—For you can't go lower than the lowest.
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A JOB LOT OF 50 CHILDREN'S OVERCOATS, ages 3 to 10 Years, WE OFFER AT HALF THEIR ORIGINAL COST PRICE.

S. S. NATHAN & CO., Gents' Clothiers and Furnishers, 301, 303, 305 K St.

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NEW PAVILION.

SUNDAY..........................NOVEMBER 1th

Two Grand Performances!

Matinee at 2:30. Evening at 8.

Gilmore's * Jubilee * Festival

WITH THE GREAT BAND!

CAMPANINI, MYRON WHITNEY, DE VERE, DICKERSON, DUZEUSI, BOLOGNA, STONE-BARTON, CLARA POOLE.

ANVILS, ARTILLERY, ETC.

50c { General Admission, 50 cts. Reserved Seats, $1. Sale opens at Houghton's Bookstore, Tuesday, Nov.5th } 50c

n5 5t

BASEBALL!

SATURDAY..............November 9th,

Sacramento vs. Oakland.

Game called at 3 o'clock. No trains.

OAKLAND.	POSITIONS.	SACRAMENTO.
Long	Center Field	Goodenough
Dailey	First Base	Selna
Hardie	Right Field	Roxburg
Smalley	Third Base	Hughes
O'Neill	Shortstop	Newbert
McDonald	Second Base	Gagus
Stallings	Catcher	Carroll
Farrell	Left Field	Roberts
Wehrle	Pitcher	Ziegler
Coughlin	Extra	Knell

n8-2t

BASEBALL—SUNDAY, NOV. 10th.

NO TRAINS. GAME CALLED AT TWO o'clock. Admission, 25 cents; Ladies free. ALL-AMERICANS—Johnson, c.; Managan, p; Sayres, 1st b.; Robertson, 2d b.; Dunphey, 3d b.; Smith, s. s.; Warren, l. f.; Bidwell, c. f.; Lampert, r. f. BRIGHTONS—Doherty, c.; Barry, p; Warren, 1st b.; Rooney, 2d b.; Ranlett, 3d b.; Campbell, s. s.; Boyne, l. f.; Shanahan, c. f.; McLaughlin, r. f. n8-2t

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Old Pavilion, Corner Sixth and M Sts. n4tf

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"Home again," after her most successful European tour, the charming little Comedienne,

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Supported by her own Company par excellence, including the Popular Comedian, MR. BURT HAVERLY.

To-night (Saturday), Last Performance,

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By Tom Craven, author of "The Stowaway," etc. Incidental to the play, PATTI ROSA and Company will introduce songs and dances, duets, trios, medleys, and her noted banjo solos.

PRICES—50 and 75 Cents. No higher. Seats now on sale. n6-4t

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Monday and Tuesday, Nov. 11 and 12.

The Original and Only Davy Crockett! The Original and Only Waldemar!

At the request of the people,

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"America's Greatest Romantic Actor."

MONDAY,

His Never-failing Idyl of the Backwoods,

Davy Crockett.

TUESDAY.........NORDECK.

Prices, 50 and 75 cents—no higher. Reserved Seats on sale Saturday. n8

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Froebel Kindergarten Society,

—BY—

Miss IDA M. BENFEY

—AT THE—

Clunie Opera House, Monday Evening,

NOVEMBER 11, 1889.

Admission..........................50 cents
Reserved Seats....................75 cents

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