DANIEL, TRUSTEE IN BANKRUPTCY, *v.* GUARANTY TRUST CO. OF NEW YORK.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 179. Argued December 11, 1931.—Decided March 14, 1932.

1. The filing of a petition for reclamation before a referee in bankruptcy does not submit the petitioner to the summary jurisdiction of the referee in matters having no immediate relation to such claim.
   So *held* where the referee attempted to adjudicate and enforce a counterclaim for money alleged to belong to the trustee in bankruptcy against a trust company which had sought the return of certain bonds, of which, it was alleged, the bankrupt had gained possession by fraud. P. 161.
2. In No. XXXVII of General Orders in Bankruptcy, the provision that "In proceedings in equity, instituted for the purpose of carrying into effect the provisions of the act, or for enforcing the rights and remedies given by it, the rules of equity practice established by the Supreme Court of the United States shall be followed as nearly as may be," does not apply to summary proceedings before a referee for the restoration of specific property. P. 162.

49 F. (2d) 866, affirmed.

CERTIORARI, 284 U. S. 602, to review a judgment of reversal on an appeal from an order of the District Court modifying and affirming an order of a referee in bankruptcy.

Mr. Winthrop B. Lane, with whom *Messrs. Halleck F. Rose, Arthur R. Wells,* and *Paul L. Martin* were on the brief, for petitioner.

A referee in bankruptcy has summary jurisdiction to order a person holding property of the bankrupt estate without adverse claim, to deliver the property to the trustee in bankruptcy. Bankrutcy Act, §§ 2, 23, 33, 36, 38; *Mueller* v. *Nugent,* 184 U. S. 1; *Harrison* v. *Chamberlain,* 271 U. S. 191.

A mere assertion of an adverse claim does not oust this jurisdiction. The court may inquire for the purpose of ascertaining whether the claim is substantial or merely colorable or frivolous. If the claim is of the latter class, the court may proceed the same as though no adverse claim had been asserted. *Mueller* v. *Nugent, supra; Gamble* v. *Daniel,* 39 F. (2d) 447; *May* v. *Henderson,* 268 U. S. 111.

A claimant cannot acquire an adverse interest in property of the bankrupt estate that comes into his possession after adjudication in bankruptcy. *May* v. *Henderson, supra; Reed* v. *Barnett Nat. Bank,* 250 Fed. 983; *Knapp & Spencer Co.* v. *Drew,* 160 Fed. 413; *Eppley* v. *Baylor,* 293 Fed. 305; *Harrison* v. *Chamberlain,* 271 U. S. 191.

The court has the same summary jurisdiction to order the delivery of money or bank deposits as it has to order the delivery of tangible property, real or personal. *May* v. *Henderson,* 268 U. S. 111; *Knapp & Spencer Co.* v. *Drew, supra; Reed* v. *Barnett Nat. Bank, supra; In re Davis,* 119 Fed. 950; *In re Walker Grain Co.,* 295 Fed. 120; *In re Radley Steel Const. Co.,* 212 Fed. 462.

The court has jurisdiction to adjudicate adverse claims on property in its possession. Bankruptcy Act, § 70 (a); *Murphy* v. *Hofman Co.,* 211 U. S. 562; *Whitney* v. *Wenman,* 198 U. S. 539; *U. S. Fidelity & G. Co.* v. *Bray,* 225 U. S. 205; *Isaacs* v. *Hobbs Tie & Timber Co.,* 282 U. S. 734; *Straton* v. *New,* 283 U. S. 318; *Taubel-Scott-Kitzmiller Co.* v. *Fox,* 264 U. S. 426.

The presentation by the trustee of the cross-demand and the power of the court to determine the issue so presented, are sanctioned by Equity Rule 30 and General Order in Bankruptcy XXXVII. *Buffalo Specialty Co.* v. *Vancleef,* 217 Fed. 91; *Champion Spark Plug Co.* v. *Champion Ignition Co.,* 247 Fed. 200; *Marconi Wireless Co.* v. *National Elec. Signaling Co.,* 206 Fed. 295; *Electric Boat Co.* v. *Lake Torpedo Boat Co.,* 215 Fed. 377; *Goodno*

v. *Hotchkiss,* 230 Fed. 514; *Harper Bros.* v. *Klaw,* 232 Fed. 609; *Dykes* v. *Widdows,* 31 F. (2d) 745; *Champlain Realty Co.* v. *Brattleboro,* 260 U. S. 366.

The respondent, by coming into the bankruptcy court and seeking affirmative summary relief, thereby gave the court jurisdiction of its person, as to such issue, and all such defenses, including affirmative claims, that might be properly litigated in that summary proceeding. Consent thus given can not be withdrawn so as to deprive the court of jurisdiction so obtained. *Operative Piano Co.* v. *First Wisconsin Trust Co.,* 283 Fed. 904; *In re Bennett,* 285 Fed. 351; *In re Pennsylvania Coffee Co.,* 8 F. (2d) 98; *Triangle Electric Co.* v. *Foutch,* 40 F. (2d) 353; *In re Dernburg & Son, Inc.,* 5 F. (2d) 37; *In re Barnett,* 12 F. (2d) 73; *Wiswall* v. *Campbell,* 93 U. S. 347.

Equitable terms may be imposed by a court as a condition of granting an order of reclamation. *In re Hooven-Owens-Rentschler Co.,* 195 Fed. 424; Remington on Bankruptcy, vol. 5, p. 602.

Respondent's withdrawal did not defeat the jurisdiction to determine the issue raised by the answer. *Vidal* v. *Securities Co.,* 276 Fed. 855; *Buffalo Specialty Co.* v. *Vancleef,* 217 Fed. 91.

The speedy administration of the bankruptcy law requires the application of the modern equity practice which permits the adjudication of all controversies between the same parties in one suit. *Mueller* v. *Nugent,* 184 U. S. 1; *May* v. *Henderson,* 268 U. S. 111; *Harrison* v. *Chamberlain,* 271 U. S. 191.

Courts of bankruptcy, in the exercise of their equity powers, act *in personam* and have summary jurisdiction where a party voluntarily appears or can be served with process, regardless of the location of the *res* or domicile of the party. *Robertson* v. *Howard,* 229 U. S. 254; *Isaacs* v. *Hobbs Tie & Timber Co.,* 282 U. S. 734; *Alco Film*

Corp. v. *Alco Film Service,* 234 Fed. 55; *Orinoco Iron Co.* v. *Metzel,* 230 Fed. 40; *In re Britannia Mining Co.,* 197 Fed. 459; *In re Small Shoe Co.,* 5 F. (2d) 956; *Staunton* v. *Wooden,* 179 Fed. 61.

Ancillary jurisdiction does not bar the court of primary jurisdiction from acting if the non-resident party voluntarily appears before it.

Mr. Porter R. Chandler, with whom *Messrs. John W. Davis* and *Wm. C. Dorsey* were on the brief, for respondent.

Irrespective of whether respondent had an adverse interest in the balance of the demand loan account claimed by the trustee, the referee had no jurisdiction to entertain such a counterclaim. *Weidhorn* v. *Levy,* 253 U. S. 268, 271; *General Phonograph Corp.* v. *Fanning,* 6 F. (2d) 115; *Hebert* v. *Crawford,* 228 U. S. 204; *Murphy* v. *Hofman Co.,* 211 U. S. 562; *White* v. *Schloerb,* 178 U. S. 542; *Isaacs* v. *Hobbs Tie & Timber Co.,* 282 U. S. 734.

Courts have frequently and uniformly held that General Order XXXVII is not applicable to a summary proceeding. *In re Cunney,* 225 Fed. 426; *International Harvester Co.* v. *Carlson,* 217 Fed. 736, 739; *In re Hughes,* 262 Fed. 500; *Bradley* v. *Huntington,* 277 Fed. 948; *In re Kenney & Greenwood,* 23 F. (2d) 681.

Assuming that the referee did not err in overruling respondent's motion to strike out paragraph 8 of the trustee's answer, the referee should nevertheless have subsequently dismissed the counterclaim when it appeared that the subject matter of the counterclaim was not a specific *res,* or an admitted bank deposit, but was in effect merely an alleged debt. *In re Haley,* 158 Fed. 74, appeal dismissed 209 U. S. 546; *In re Howe Mfg. Co.,* 193 Fed. 524; *In re Ballou,* 215 Fed. 810; Remington on Bankruptcy vol. 5, § 2350.

Assuming that the counterclaim of the trustee is for property existing in tangible form, the referee is neverthe-

less bound to make inquiry as to whether the respondent has an adverse interest in such property. The record discloses that the respondent has an adverse interest which precluded the referee from proceeding further on the counterclaim. If the adverse interest asserted by the party in possession of the property is found to be substantial and not colorable, the jurisdiction of the referee thereupon terminates. A plenary suit must then be instituted. *May* v. *Henderson,* 268 U. S. 111; *In re Selfridge,* 33 F. (2d) 800; *Shea* v. *Lewis,* 206 Fed. 877; *Board* v. *Leary,* 236 Fed. 521; *Priest* v. *Weaver,* 43 F. (2d) 57; *Johnston* v. *Spencer,* 195 Fed. 215; *Gamble* v. *Daniel,* 39 F. (2d) 447.

Mr. Justice McReynolds delivered the opinion of the Court.

December 10, 1929, The Peters Trust Company, of Omaha, Nebraska, was adjudged bankrupt by the United States District Court for that State. March 17, 1930, Herbert S. Daniel, petitioner here, became trustee of the estate.

In April, 1930, the Guaranty Trust Company of New York presented to the same court a petition for the reclamation of designated bonds. It alleged that, while insolvent and without intent to pay for them, the Peters Company had fraudulently ordered and received these bonds from the Guaranty Company of New York; that title thereto had not passed to the Peters Company; that no part of the purchase price had been paid. Also " that on the dates said bonds were shipped by the Guaranty Company of New York, said Guaranty Company of New York, sold, assigned and set over to your petitioner, Guaranty Trust Company, for a valuable consideration, the accounts against the said Peters Trust Company for said bonds, and your petitioner is now the owner of said bonds "; and that they were unlawfully withheld by the

trustee. The prayer was "that an order be entered instructing and directing, Herbert S. Daniel, Trustee of said Peters Trust Company, Bankrupt, to deliver to your petitioner the bonds described above and that your petitioner have such other and further relief as may seem just and proper."

The trustee answered. He denied that the bankrupt had acted fraudulently. He asserted that title to the bonds had vested in it and petitioner had no right to recover them.

After such denials and allegations, the trustee (Answer, par. 7) stated that customers of the Peters Trust Company had placed orders with it to buy the bonds; that they had an interest in the controversy and should be made parties to the proceeding. Also (par. 8)—

"Your trustee further alleges, that the Guaranty Trust Company of New York, the petitioner and applicant herein, has in its possession, on deposit, approximately the sum of $31,224.60 which belongs to the bankrupt estate, and which was accumulated by the Receiver and Trustee of said bankrupt estate since the date it was adjudicated bankrupt. The trustee has made due demand upon the petitioner for delivery of the said money, but the Guaranty Trust Company of New York, has refused to deliver the said funds or any part thereof, and should be required to account for all funds collected by it on behalf of the receiver or trustee of Peters Trust Company, Bankrupt, or the bankrupt estate, and be directed to deliver the same forthwith to Herbert S. Daniel, Trustee."

The answer concludes—

"The trustee further prays for an order directing the Guaranty Trust Company of New York to account to him for all funds collected or now held by it belonging to the bankrupt estate, and be ordered to deliver the same [forthwith] to your trustee, and for such other relief as to the Court may seem just and equitable."

The matter went to the referee. The Guaranty Trust Company moved that paragraphs 7 and 8 be stricken from the answer because they pertained to an issue entirely separate from the one submitted by its petition. This was overruled. Thereupon, counsel for the Trust Company asked that the reclamation proceeding be dismissed, and then withdrew.

The referee took testimony concerning the relationship and dealings among the parties. He found that the reclamation proceedings should be dismissed only insofar as they sought to obtain the securities. Also, "the court further finds that the Guaranty Trust Company has in its hands the sum of $23,724.60 in cash, belonging to Herbert S. Daniel, trusteee of the above named bankrupt; that said sum was accumulated by Herbert S. Daniel as receiver subsequent to February 12th, 1930, said moneys having been collected by said Guaranty Trust Company for and on behalf of said bankrupt estate from the Prudential Insurance Company of America on mortgages made by the bankrupt and sold to the Prudential Insurance Company of America, and that said Guaranty Trust Company has not made herein any claim to the said fund of $23,724.60, and has no claim to the said fund, or to any part thereof, and is merely holding the said sum of $23,724.60 as custodian and agent of Herbert S. Daniel, as trustee of the above named bankrupt, and that said sum should be delivered forthwith to said trustee."

The referee's final order directed the trustee to deliver the bonds to specified customers of the Peters Trust Company upon stated conditions, and further "That the Guaranty Trust Company of New York, the applicant herein, be, and it is hereby ordered and directed to forthwith pay over to Herbert S. Daniel, as trustee of the above bankrupt estate, the sum of $23,724.60, of moneys in the hands of said Guaranty Trust Company of New

York, belonging to Herbert S. Daniel, trustee of said bankrupt estate, with interest thereon at the rate of 7 per cent per annum from this date."

The District Court modified the referee's order as to interest and then affirmed it. The Guaranty Trust Company appealed. The Circuit Court of Appeals upheld the objection offered to the jurisdiction of the referee and upon that ground reversed the District Court. 49 F. (2d) 866. It said—

". . . The petition of appellant for reclamation and the portion of the trustee's answer which asked for affirmative relief were, in fact, petitions by the parties asking the referee to exercise his summary jurisdiction in proceedings in bankruptcy. The two proceedings were quite distinct. Appellant sought to recover certain bonds to which it claimed title. The trustee sought an order that appellant should pay over money of the bankrupt estate received by appellant, after bankruptcy. The proceedings would not have been more unrelated to each other, if the trustee had sought an order on appellant for the delivery of books and papers such as was asked in *Babbitt* v. *Dutcher,* 216 U. S. 102, or an order for the examination of witnesses such as was asked in *Elkus, Petitioner,* 216 U. S. 115. We have been cited to no authority for the proposition that a creditor or other petitioner asking specific relief against a bankrupt's estate, as provided by the Bankruptcy Act, thereby becomes subject to summary orders by the referee in matters entirely disconnected from the subject matter of such claim or petition, and no such authority is believed to exist."

The conclusion of the Circuit Court of Appeals is correct and its decree must be affirmed.

In the circumstances, Did the referee have jurisdiction to enter the turnover order against the Trust Company?

The answer must be "No" unless that Company by filing its petition for reclamation entered its general appearance and in effect consented to submit itself to summary proceedings before that officer in respect of matters having no immediate relation to the claim which it had presented.

In practice such a rule might lead to unfortunate complications and deprive owners of property of fair opportunity to recover. The risk incident to a general appearance and consent to adjudication of claims of all kinds might easily deter where the right to recover is clear. Moreover, the choice would not be between tribunals merely, but between the ordinary processes in a plenary suit and a summary hearing. We are not cited to any opinion by an appellate court which definitely approves the view advanced by the petitioner. We cannot conclude that the demand for speedy administration of bankrupt estates is enough to justify such a radical departure from ordinary procedure. And the suggestion that it is possible to impose equitable terms as a condition to an order of reclamation is not helpful. No such conditional order was proposed or entered.

The petitioner maintains that, read together and properly construed, General Order XXXVII and Equity Rule 30 applied in the circumstances and invested the referee with jurisdiction to act as he did.

General Order XXXVII—General Provisions: "In proceedings in equity, instituted for the purpose of carrying into effect the provisions of the act, or for enforcing the rights and remedies given by it, the rules of equity practice established by the Supreme Court of the United States shall be followed as nearly as may be. In proceedings at law, instituted for the same purpose, the practice and procedure in cases at law shall be followed as nearly as may be. But the judge may, by special order in any case, vary the time allowed for return of process,

for appearance and pleading, and for taking testimony and publication, and may otherwise modify the rules for the preparation of any particular case so as to facilitate a speedy hearing."

No. 30, Rules of Practice for the Courts of Equity of the United States, provides—". . . The answer must state in short and simple form any counter-claim arising out of the transaction which is the subject matter of the suit and may, without cross-bill, set out any set-off or counter-claim against the plaintiff which might be the subject of an independent suit in equity against him, and such set-off or counter-claim, so set up, shall have the same effect as a cross-suit, so as to enable the court to pronounce a final judgment in the same suit both on the original and the cross-claims."

Section 2, Bankruptcy Act, grants to bankruptcy courts "such jurisdiction in law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings to . . . (7) cause the estates of bankrupts to be collected, reduced to money and distributed and determine controversies in relation thereto, except as herein otherwise provided." And § 38 extends to referees "jurisdiction to . . . (4) perform such part of the duties, except as to questions arising out of the applications of bankrupts for compositions or discharges, as are by this Act conferred on courts of bankruptcy of their respective districts, except as herein otherwise provided; . . ."

Counsel for petitioner assert: Bankruptcy proceedings constitute a branch of equity jurisdiction; a court sitting in bankruptcy is a court of equity. *Fidelity Trust Co.* v. *Gaskell* (8th C. C. A.), 195 Fed. 865, 871. Remington on Bankruptcy, Vol. 1, p. 48, § 23.

And then they say: "Obviously, except as the privilege of modification is granted to facilitate speedy hearings, the rules of equity practice are applicable, without limitation or reservation, to all equitable proceedings in

courts of bankruptcy," including of course summary proceedings before referees.

Without regard to other objections to the reasoning offered to support petitioner's view, it is obviously unsound unless the words "proceedings in equity," in General Order XXXVII apply to summary proceedings before a referee like those here in question. And we think no such intendment can be attributed to them.

This Order contains general provisions designed to bring about prompt settlement of bankrupt estates. To that end it directs that in proceedings in equity and at law instituted for the purpose of carrying the Bankruptcy Act into effect and enforcing rights and remedies given thereby, the rules which govern practice in equity and law courts shall be observed, but that the judge may modify them "so as to facilitate a speedy hearing."

Many of the equity rules are inapplicable to summary proceedings before referees. Such proceedings are not in equity as that term is commonly understood. General Order IV—Conduct of Proceedings—uses the words "Proceedings in bankruptcy" when referring to the practice to be followed by Bankruptcy courts—other orders use the word "proceedings."

The distinction between summary proceedings and plenary suits is adverted to in *Weidhorn* v. *Levy,* 253 U. S. 268, 271, 273. There it is also suggested that "proceedings in equity" and "proceedings at law," as used in General Order XXXVII, refer to something other than "proceedings in bankruptcy."

Our conclusion accords with what has been held by other Federal courts. *In re Cunney,* 225 Fed. 426; *International Harvester Co.* v. *Carlson,* 217 Fed. 736, 739; *In re Hughes,* 262 Fed. 500; *Bradley* v. *Huntington,* 277 Fed. 948; *In re Kenney & Greenwood,* 23 F. (2d) 681.

The decree of the Circuit Court of Appeals is

Affirmed.