

No. 11,669

IN THE

United States Circuit Court of Appeals  
FOR THE NINTH CIRCUIT

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DIVISION OF LABOR LAW ENFORCEMENT, STATE OF CALIFORNIA, statutory assignee etc.,

*Appellant,*

*vs.*

GEORGE T. GOGGIN, TRUSTEE IN BANKRUPTCY OF THE ESTATE OF KESSCO ENGINEERING CORPORATION, and HARRY C. WESTOVER, Collector of Internal Revenue for the Sixth Collection District of California,

*Appellees.*

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Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

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BRIEF FOR THE COLLECTOR.

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## BRIEF FOR THE COLLECTOR.

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### Opinion Below.

The court below did not file a written opinion. The findings of fact and conclusions of law of the Referee in Bankruptcy, which were adopted as its own, and the order of the referee, which was in all respects confirmed by the court below [R. 35-36], are set out in the record at pages 9 to 14, inclusive.<sup>1</sup>

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<sup>1</sup>By order of the District Court [R. 47], the appellant was allowed to prosecute this appeal *in forma pauperis* and the record on appeal has not been printed.

## Jurisdiction.

This proceeding arose in the District Court of the United States for the Southern District of California, Central Division, upon a voluntary petition in bankruptcy [R. 2-3], filed pursuant to Section 18 of the Bankruptcy Act, as amended, by Kessco Engineering Corporation, a California corporation, with its principal place of business at Los Angeles, California, on March 26, 1946, and an adjudication of bankruptcy and general reference made by that court on the same date [R. 4]. Jurisdiction of the court below in the premises is conferred by Section 11 of the Bankruptcy Act, as amended. Under date of October 17, 1946, the Trustee in Bankruptcy filed a petition, stating that the Collector of Internal Revenue and the Department of Employment of the State of California had filed certain tax claims, claiming a lien upon the assets in the hands of the trustee, and that in addition thereto certain labor claimants asserting prior labor claims had filed their labor claims either through the Division of Labor Law Enforcement of the State of California or individually, and requesting that an order be issued requiring such claimants to appear and show cause why the order of priority of payment of their claims and of the expenses of administration should not be determined by the court [R. 5-6, 24]. An appropriate order to show cause was issued under date of October 18, 1946 [R. 7-8, 24]. A hearing pursuant to the order to show cause was held before the referee on October 30, 1946 [R. 9, 24], on the basis of which the referee, under date of December 12, 1946, entered his findings of fact, conclusions of law, and order [R. 9-14]. Under date of December 17, 1946, the Division of Labor Law Enforcement, Department of

Industrial Relations, State of California, representing all prior wage claimants [R. 9, 36], filed a petition for review by the court below of the referee's order of December 12, 1946 [R. 15-22]. The referee's certification petition for review of the order of December 12, 1946 [R. 23-29], was filed with the court below on January 20, 1947 [R. 29], and a minute order affirming the referee's order of December 12, 1946, was entered by the District Court under date of March 31, 1947 [R. 31]. Notice of appeal from such minute order was filed by the Division of Labor Law Enforcement, Department of Industrial Relations, State of California, pursuant to Section 25(a) of the Bankruptcy Act, as amended, on April 28, 1947 [R. 32]. Under date of May 6, 1947, the referee filed with the District Court a supplemental certificate on the petition for review giving the names of all prior wage claimants represented by the Division of Labor Law Enforcement and the amount of their respective claims [R. 33-34], and on May 21, 1947, the District Court entered its judgment confirming the order of the referee and adopting as its own the findings of fact and conclusions of law of the referee [R. 35-36]. Notice of appeal was filed May 21, 1947 [R. 48].

The jurisdiction of this Court to hear and determine this appeal is conferred by Section 24(a) of the Bankruptcy Act, as amended, and Section 128(c) of the Judicial Code.

### Question Presented.

The only question involved is whether the court below, in affirming the order of the referee in bankruptcy, erred in holding that under the facts the Collector of Internal

Revenue has a lien superior to all other claims on the funds which will remain in the hands of the trustee in bankruptcy after costs of administration as allowed by the court have been paid.

### Statutes Involved.

The applicable provisions of the Bankruptcy Act, as amended, are printed in the Appendix, *infra*, pp. 1-3.

### Statement.

The court below adopted as its own findings of fact [R. 31, 35-36], the findings of fact made by the referee in bankruptcy [R. 9-12], which are, briefly, that prior to the commencement of the present bankruptcy proceedings on March 26, 1946, the Collector of Internal Revenue for the Sixth Collection District of California, one of the appellees here [R. 10]—

was in physical possession of the personal property of the within bankrupt having made a seizure pursuant to the tax claims of the Collector

against the bankrupt in the sum of \$40,921.94,<sup>2</sup> and that in addition to having made a physical seizure of the personal property of the bankrupt, Kessco Engineering Corporation, the Collector, had, prior to March 26, 1946, filed notices of lien with respect to various taxes, including the taxes here involved [R. 10].<sup>3</sup>

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<sup>2</sup>According to a schedule of assessments attached as an exhibit to the finding of the referee [R. 10, 14].

<sup>3</sup>By stipulation of the parties the original claim for \$40,921.94 was disallowed, and was superseded by an amended claim for the sum of \$78,865.03 [R. 10].



On or about April 27, 1946, the Department of Employment of the State of California filed a tax claim with the trustee in the sum of \$15,135, which had been recorded as a lien on or about December 24, 1945 [R. 10-11].<sup>4</sup>

Certain labor claims also were filed with the trustee. In a petition to show cause why the tax and labor claimants should not have their respective priorities determined by the court below, the trustee listed certain labor claimants who had either filed their claims individually or through the Division of Labor Law Enforcement of the State of California [R. 5-6]. The referee found that such claimants had owing to them as of March 26, 1946, the date of commencement of the bankruptcy proceedings, for services rendered to the bankrupt within 90 days prior to the adjudication in bankruptcy, the total sum of \$2,838.79, and that the Division of Labor Law Enforcement was appearing on behalf of all such claimants [R. 11]. In his supplemental certificate on the petition of the Division of Labor Law Enforcement for review by the court below of his order determining priorities, the referee listed labor claimants having filed labor claims in the total sum of \$3,424.87 [R. 33-34].

After the adjudication in bankruptcy the personal property of the bankrupt then in the possession of the Collector of Internal Revenue was turned over by the Collector to the trustee in bankruptcy, who accepted it subject to the terms and conditions of a telegram from J. P.

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<sup>4</sup>This claim does not seem to be involved in the present appeal.

Wenchel, then Chief Counsel of the Bureau of Internal Revenue, which reads as follows [R. 11-12]:

Reference to telephone conversation today with Mr. Webb relative to Kessco Engineering Corporation, Bankrupt, no objection by this office to Collector relinquishing personal property to Trustee for sale. Government's lien to attach to proceeds from sale subject to Trustee's expenses including costs of sale.

J. P. WENCHEL  
Chief Counsel.

In his certificate on the petition for review of his order of December 12, 1946, covering the disbursement of assets of the bankrupt estate [R. 23-29], the referee elaborated upon the foregoing findings to the extent of stating that the trustee had liquidated all of the assets which had come into his possession and that the funds which he has on hand are insufficient to pay in full the expenses of administration, the lien claims, and the prior labor claims and prior tax claims [R. 23]; that the Collector of Internal Revenue and the Department of Employment of the State of California (representing the prior labor claimants) had asserted liens which were in effect at the time of the commencement of the receivership proceeding [R. 23-24]; that at the hearing before the referee it was conceded by all parties concerned that at the time of the commencement of the bankruptcy proceeding the Collector was in physical possession of all the assets of the bankrupt later liquidated by the trustee and that the Collector at that time had a valid lien on such assets of the bankrupt superior to all other claimants in the matter [R. 24]; that the Division of Labor Law Enforcement, representing the prior labor claimants, took the position that by surrendering the physical possession of the assets in

question to the then receiver, had lost the superior position which his lien had theretofore enjoyed [R. 24, 25].

In that part of his certificate dealing with the evidence in the case the referee stated that on the date of the commencement of the bankruptcy proceeding the assets of the bankrupt, later liquidated by the trustee, were in the physical possession of the Collector of Internal Revenue [R. 26]. The Collector previously had made a seizure of the assets of the bankrupt pursuant to certain tax claims asserted against the bankrupt [R. 26]. In addition to having made physical seizure of the property of the bankrupt the Collector had, prior to commencement of the bankruptcy proceeding, filed notices of lien with respect to various taxes, including the taxes here involved, and that pursuant to his legal rights in the premises the Collector had conducted a sale of the assets involved and received bids thereon [R. 26-27]; that the sale was not completed because the price obtained was unsatisfactory, and that a second sale by the Collector was instituted but was abandoned when the assets of the bankrupt then in his possession were delivered to the receiver (now trustee) of the bankrupt estate [R. 27]. Upon his appointment and qualification as receiver, he contacted the Collector of Internal Revenue and conversations were had between the receiver and counsel in the Los Angeles office of the Collector relating to the turning over to the receiver of the assets of the bankrupt in the possession of the Collector. These conversations culminated in the receipt by the Collector of the foregoing telegram from the Chief Counsel of the Bureau of Internal Revenue, on the basis of which the Collector turned over to the referee the seized assets of the bankrupt which were in his possession at the time of commencement of the bankruptcy proceeding [R. 27].

In his certificate to the court below, mentioned above, the Referee in Bankruptcy said the contents of the telegram from the Chief Counsel for the Bureau of Internal Revenue were imparted by telephone to the office of the receiver and that no formal acceptance or acknowledgment of it was made by the receiver. No notice of the telegram or its contents was given to any of the creditors of the bankrupt or other parties in interest in the bankruptcy proceeding, and no notice thereof was given at the time of trustee's sale of the assets involved. After the contents of the telegram in question had been imparted to the office of the trustee, the trustee, with full knowledge of the telegram from the Chief Counsel of the Bureau of Internal Revenue and of its contents, and without any objection thereto, took over the possession of the assets from the Collector. Later the receiver, in his capacity as Trustee in Bankruptcy, caused the assets involved to be sold at public auction pursuant to order of the court below [R. 28].

On the basis of the evidence before him the Referee in Bankruptcy concluded as a matter of law that the expenses of administration should first be paid from the funds in the hands of the trustee, and that after payment of such expenses of administration the Collector of Internal Revenue has a lien superior to all other claimants upon the balance of the funds (insufficient to pay the full amount of his secured tax claims) by reason of his seizure of the property of the bankrupt prior to commencement of the bankruptcy [R. 12]. The trustee's conclusions of law and order entered in accordance therewith [R. 12-13] were in all respects affirmed by the court below [R. 31, 35-36].

## Summary of Argument.

The lien of the Collector of Internal Revenue for unpaid taxes was, under the circumstances of this case, superior to all other liens and claims except costs of administration, which the Government had expressly agreed should be paid ahead of the claim for taxes. At the time the petition in bankruptcy was filed the Collector was, pursuant to his lien for taxes, in physical possession of the personal property of the bankrupt, and in that situation the Collector had a lien on the property here involved superior to all other claims. Under Section 67c of the Bankruptcy Act, as amended, the property was not subject at the time of bankruptcy to the priority in payment prescribed by Section 64a of the Act.

After the adjudication in bankruptcy the Collector, following negotiations looking to such an arrangement, released to the Receiver in Bankruptcy, for sale, the personal property of the bankrupt, pursuant to authority from the Chief Counsel for the Bureau of Internal Revenue, which authorized such release on the condition that the Government's lien should attach to the proceeds from the sale "subject to Trustee's expenses including costs of sale." The conditions thus attached by the Government to the release and sale of the personal property involved did not subordinate the secured claim of the Collector to prior wage claims against the bankrupt estate.

The rights of the parties here involved were properly determined by the court below in accordance with the agreement of the Government and the Referee in Bankruptcy. Wage claimants were not necessary parties to that agreement and obtained no additional rights thereby.

## ARGUMENT.

The Court Below Did Not Err in Holding, Under the Facts, That the Collector of Internal Revenue Has a Lien Superior to All Other Claims Upon the Balance of Funds Remaining in the Hands of the Trustee After Payment of Expenses of Administration.

The legal question involved in this case appears to be unique. The referee found [R. 9-10], and the appellant admits (Br. 5, 7), that at the time of the commencement of the bankruptcy proceeding the Collector was in possession of all the personal property of the bankrupt, having seized such property to satisfy outstanding liens of the Federal Government. The appellant, inferentially at least (Br. 7), admits that by reason of his possession of the personal property of the bankrupt prior to the adjudication, he had a lien superior to all other claimants. The appellant even goes to the extent of pointing out that the Collector could have avoided this controversy if he had retained possession of the property involved and foreclosed his tax liens by separate sale of the property in question (Br. 13).

The contention of the appellant is that by surrendering possession of the personal property of the bankrupt, the Collector lost the priority in payment which otherwise was assured him by the Bankruptcy Act, as amended, and that his claim for payment is thereby relegated to an inferior position and can be paid only after the payment of expenses of administration and prior wage claims (Br. 11-15); that any private agreement between the receiver or trustee and the Collector of Internal Revenue concerning the attachment of statutory liens to the proceeds of a trustee's sale, when possession of the personal property of

the bankrupt was voluntarily transferred to the receiver or trustee, would not be binding upon prior wage claimants (Br. 15-18); and that under Section 67c of the Bankruptcy Act, as amended [Appendix, *infra*], administration expenses and wage claims are jointly given priority over statutory liens not accompanied by possession (Br. 18-19). As a part of this argument it is insisted (Br. 12-15) that the possession of the lienholder contemplated by Section 67c of the Bankruptcy Act, as amended "means actual possession prior to and subsequent to filing of the petition in bankruptcy."<sup>5</sup> The authorities cited by the appellant (Br. 13-15) do not require this construction of the applicable section of the Bankruptcy Act and we know of no authority which does require such construction.

While the appellant's argument, unsupported by any convincing authority, is based upon the proposition that the Collector, by surrendering possession of the personal property of the bankrupt to the receiver, thereby lost all priorities under the statute, the conclusion of the referee and the decision of the court below are based upon an entirely different understanding of the facts and the law. In his certificate on the appellant's petition for review of his order of December 12, 1946, the referee points out [R. 24-25] that he rejected the contentions of the appellant and held that—

under the terms and conditions of the relinquishment by the Collector to the then receiver in this matter of the physical possession of the aforesaid assets

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<sup>5</sup>This is the same theory advanced by the appellant in its petition for review of the referee's order of December 12, 1946 [R. 15-22].

the Collector had a lien on the proceeds of the trustee's sale superior to all other claimants and subject only to the payment of the expenses of administration as allowed by the bankruptcy court. In his statement of the questions presented [R. 25-26], the referee still further amplifies the basis of his decision to the extent of pointing out that it was based upon the agreement of the parties most directly interested rather than upon the provision of the Bankruptcy Act which would have been controlling in the absence of such agreement.

In other words, the referee and the court below have given effect to the considered agreement of the trustee and the Government, which was the only party fully covered and protected by the statute, while the appellant is contending that any such agreement is a nullity under the Bankruptcy Act.<sup>6</sup> Any such notion certainly is not in keeping with the spirit of the Bankruptcy Act, and is not supported by any of the authorities cited by the appellant (Br. 11-19).

Section 64a of the Bankruptcy Act, as amended [Appendix, *infra*], provides for the payment of debts of the bankrupt, including taxes, having priority before any payment distribution to general creditors, and specifies the order of such payment. Expenses of administration of the bankrupt estate are given first priority; wages, not to exceed \$600 to each claimant, are to be paid next. Sec-

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<sup>6</sup>Certainly the Collector could not have released the assets of the bankrupt under any conditions other than the conditions authorized by the Commissioner of Internal Revenue, and it is extremely doubtful whether, as a matter of law, the Commissioner or the Collector could have released the property under any conditions other than those authorized.



tion 67b of the Act, as amended [Appendix, *infra*], relates to certain classes of liens, including liens for taxes and debts owing to the United States, and Section 67(c), upon which the appellant principally relies in this proceeding, provides that where not enforced by sale before the filing of a petition in bankruptcy, though valid under subsection (b) of Section 67, such statutory liens, including liens for taxes or debts owing the United States, “on personal property not accompanied by possession of such property,” and liens whether statutory or not, of distress for rent shall be postponed in payment of the debts (costs of administration and labor claims) specified in clauses (1) and (2) of Section 64a of the Bankruptcy Act, as amended.

If the tax liens of the Collector here involved had not been “accompanied by possession” of the personal property of the bankrupt at the time the petition in bankruptcy was filed, his tax claims would have been deferred in payment until after the payment of costs of administration and labor claims as provided in Section 64a of the Bankruptcy Act. But his liens for the taxes here involved were accompanied by possession of the personal property of the bankrupt at the time the action was commenced, and there is nothing in the Bankruptcy Act which would justify holding that his possession of such property must be retained in order to protect the priority in payment which he then enjoyed.

The appellant admits (Br. 12) that the question of possession was not involved in the first two cases cited for the proposition that wage claimants represented by the appellant are entitled to priority in payment under Section 67c of the Bankruptcy Act, as amended. Nor do the authori-

ties cited therefor (Br. 12-15) support the appellant's contention that the possession by the lienholder contemplated by Section 67c of the Bankruptcy Act is actual possession "prior to and subsequent to" (Br. 12) filing of the petition in bankruptcy. Here the Collector had actual possession of the personal property of the bankrupt both "prior to" and "subsequent to" the filing of the petition, until it was released to the receiver on condition that the Collector's claims should be paid ahead of all other claims after payment of costs of administration. What the appellant apparently contends is that by surrendering possession of the assets in question to the receiver, regardless of the terms and conditions under which property was surrendered, the Collector lost the priority which he previously enjoyed by reason of his physical possession of the personal property of the bankrupt. The authorities cited (Br. 13-17) do not so hold.

*In re Jackson Brick & Tile Co.*, 189 Fed. 636 (Mo.), is cited (Br. 15) for the proposition that where a lienor voluntarily appears before a referee, presents his claim as a secured claim, and seeks its allowance, the referee may summarily determine the validity of the lien so asserted. We do not question this general principle of bankruptcy law. In the instant case the referee determined the validity of the Government's lien on the basis of the facts presented to him and there is nothing in the case just cited to indicate that his determination was wrong.

*Straton v. New*, 283 U. S. 318, cited by the appellant (Br. 13), does not have even a remote bearing upon the question here involved. It is cited only as authority for the assertion that if the Collector had proceeded with the sale of the personal property of the bankrupt then in his

possession the trustee could have appeared in the sale proceeding and seized for the bankrupt estate any excess of the proceeds after the Collector's lien had been satisfied. Also, the quotation from 5 Remington on Bankruptcy (4th Ed.), 330 (Br. 13) is not authority for the proposition that the Collector could not surrender to the receiver the personal property of the bankrupt under an agreement which would protect his priority after payment of the costs of administration.

*In re San Joaquin Valley Packing Co.*, 295 Fed. 311, cited by the appellant (Br. 14), was decided by this Court long before Section 67c of the Bankruptcy Act was amended by the Act of 1938, and the decision there had no bearing upon the question here involved. Likewise, *City of New York v. Hall*, 139 F. (2d) 935 (C. C. A. 2d), cited by the appellant (Br. 14), is not in point. That case holds only that "constructive possession" by a prior lien claimant is not sufficient under Section 67c of the Bankruptcy Act, as amended, to defeat the priority given to costs of administration and labor claims by Section 64(a) of the Act. But in this case it is admitted that the Collector had *actual* possession of the assets in question at the time the bankruptcy proceeding was instituted. In that respect the case is similar to *Davis v. City of New York*, 119 F. (2d) 559 (C. C. A. 2d), except that in the latter case the attached property was sold by the taxing authorities instead of being turned over to the referee under an agreement preserving the priority of such taxing authorities.

*In re Jay & Dee Store Co.*, 37 F. Supp. 989 (E. D. Pa.), cited by the appellant (Br. 14-15), likewise is not a case involving a lien for taxes "accompanied by posses-

sion” of personal property of the bankrupt, and does not involve the right of such a lienor to deliver such property over to the referee under an agreement which would protect his priority. Instead, the case involves a claim for rent—rather than a claim for taxes—and Section 67c of the Bankruptcy Act, as amended, makes a clear differentiation between liens for taxes “accompanied by possession” and liens for rent. Tax claims are not subordinated by Section 67c to the payment of costs of administration and wage claims where the tax lien is “accompanied by possession” of the personal property subject to the lien, while liens for rent are subordinate to such claims, regardless of whether accompanied by possession, provided the lien for rent has not been enforced by sale prior to bankruptcy.<sup>7</sup>

*In re Lebed*, 39 F. Supp. 457 (E. D. Pa.), cited by the appellant (Br. 15-16), also is distinguishable from the instant case because it also involved a lien for rent rather than a lien for taxes “accompanied by possession” of the attached property of the bankrupt.

*In re Lebed*, *supra*, is cited and quoted from by the appellant principally in support of its contention (Br. 15-18) that any agreement between the receiver or trustee and the Collector concerning the attachment of the Collector’s statutory lien to the proceeds of a trustee’s sale under the circumstances here involved would not be binding on the prior wage claimants. That case, as must the instant case, turned upon its own peculiar facts. It appears that

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<sup>7</sup>For a full discussion regarding the subordination of liens for taxes, rents, etc., to administration expenses and wage claims, see 4 Collier on Bankruptcy (14th Ed.), pars. 67.27 and 67.28, p. 234-250.

in that case certain creditors had induced the rent claimants to postpone until after bankruptcy the sale to enforce their liens for rent. This postponing inevitably made applicable the subordinating provisions of Section 67c of the Bankruptcy Act. Upon equitable principles the court naturally held that the creditors who had induced the lessors to postpone the sale should not benefit by the subordinating provisions of Section 67c. However, the creditors who had not joined in inducing the lessors to postpone their sale and who had not entered into any agreement relative thereto were, of course, free to claim the benefit of Section 67c.

There is a marked contrast between the *Lebed* case, supra, and the instant case because in the *Lebed* case the rent claimants had been subordinated by Section 67c and could only escape such subordination to the extent that the other creditors involved could be estopped to claim priority under Section 64a of the Act. Here, however, the Collector had possession of the personal property at the time of bankruptcy and payment of his claim was not subordinate to the costs of administration and wage claims. Hence, we perceive no reason why he was not free to enter into any kind of an agreement with the receiver for the sale of such assets without subordinating his claim to prior wage claims. Nor do we perceive any reason why the wage claimants would have to be made parties to such an agreement in order to effectively protect the existing priority of the Government. The Collector's action effected approximately the result, except for a possible difference in the amount of the proceeds received, that would have obtained if the Collector had sold the property involved in order to satisfy his tax liens rather

than releasing it to the receiver for sale. To hold that under the circumstances his tax claim must be subordinated to the wage claims involved would be inequitable, to say the least. It has long been recognized that bankruptcy courts have power to sell property free from liens and transfer the liens to the proceeds of sale (*Van Huffel v. Harkelrode*, 284 U. S. 225), and such power is particularly clear in this situation, where the Collector consented to such sale subject to the condition that his claim should have priority after payment of costs of administration. The consent of a lienholder to such a sale is of common occurrence (4 Collier on Bankruptcy (14th Ed.), 1606-1609), and under such circumstances it is usual for the lienholder to bear his share of the costs of administration. (4 Collier on Bankruptcy (14th Ed.), 234.)

There is no merit to the appellant's final argument (Br. 18-19) that under Section 67c of the Bankruptcy Act, administration costs and prior wage claims are jointly given priority over statutory liens, and if costs of administration are to be given priority in payment over the tax claims of the Collector then wage claims must also be given the same priority. This argument ignores the fact that the decision below was based upon the agreement between the Collector and the receiver, and not upon the provisions of the statute. It is only just that the Collector should consent to the prior payment of costs of administration under the circumstances and the decision below merely gives effect to that agreement. *Freeman Furniture Factories v. Bowlds*, 136 F. (2d) 136 (C. C. A. 6th), cited by the appellant (Br. 18), is not to the contrary because there there was no agreement similar to the agreement in this case and the case was decided strictly in accordance with the provisions of the statute.

Conclusion.

The decision of the court below is right. It is supported by the facts and the law and should be affirmed.

Respectfully submitted,

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A. F. PRESCOTT,

FRED E. YOUNGMAN,

*Special Assistants to the Attorney General.*

JAMES M. CARTER,

*United States Attorney,*

LOREN P. OAKES,

*Special Attorney, Bureau of Internal Revenue.*

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The foregoing brief is adopted and concurred in by the undersigned on behalf of the Appellee, Trustee.

MARTIN GENDEL,

*Attorney for Appellee, George T. Goggin, Trustee in Bankruptcy of Estate of Kessco Engineering Corporation.*









## APPENDIX.

Bankruptcy Act 1898, c. 541, 30 Stat. 544, as amended by the Act of June 22, 1938, c. 575, 52 Stat. 840, Sec. 1:

Sec. 64. DEBTS WHICH HAVE PRIORITY.—a. The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment, shall be (1) the actual and necessary costs and expenses of preserving the estate subsequent to filing the petition; the filing fees paid by creditors in involuntary cases; where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of the estate of the bankrupt by the efforts and at the cost and expense of one or more creditors, the reasonable costs and expenses of such recovery; the costs and expenses of administration, including the trustee's expenses in opposing the bankrupt's discharge, the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases and to the bankrupt in voluntary and involuntary cases, as the court may allow; (2) wages, not to exceed \$600 to each claimant, which have been earned within three months before the date of the commencement of the proceeding, due to workmen, servants, clerks, or traveling or city salesmen on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt; \* \* \* (4) taxes legally

due and owing by the bankrupt to the United States  
or any State or any subdivision thereof \* \* \*

\* \* \* \* \*

(11 U. S. C. 1940 ed., Sec. 104.)

Sec. 67. LIENS AND FRAUDULENT TRANSFERS.—

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b. The provisions of section 60 of this Act to the contrary notwithstanding, statutory liens in favor of employees, contractors, mechanics, landlords, or other classes of persons, and statutory liens for taxes and debts owing to the United States or any State or subdivision thereof, created or recognized by the laws of the United States or of any State, may be valid against the trustee, even though arising or perfected while the debtor is insolvent and within four months prior to the filing of the petition in bankruptcy or of the original petition under chapter X, XI, XII, or XIII of this Act, by or against him. Where by such laws such liens are required to be perfected and arise but are not perfected before bankruptcy, they may nevertheless be valid, if perfected within the time permitted by and in accordance with the requirements of such laws, except that if such laws require the liens to be perfected by the seizure of property, they shall instead be perfected by filing notice thereof with the court.

c. Where not enforced by sale before the filing of a petition in bankruptcy or of an original petition under chapter X, XI, XII, or XIII of this Act, though valid under subdivision b of this section,

statutory liens, including liens for taxes or debts owing to the United States or to any State or subdivision thereof, on personal property not accompanied by possession of such property, and liens whether statutory or not, of distress for rent shall be postponed in payment to the debts specified in clauses (1) and (2) of subdivision a of section 64 of this Act, and, except as against other liens, such liens for wages or for rent shall be restricted in the amount of their payment to the same extent as provided for wages and rent respectively in subdivision a of section 64 of this Act.

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(11 U. S. C. 1940 ed., Sec. 107.)

