

prescribed requisites are or are not wanting, must be determined by the petitioner or his successors, in the exercise of a sound discretion and subject to the supervision of the court.

Case discharged.

All concurred.

Hillsborough, }
Dec. 10, 1901. }

TRUDA v. OSGOOD, *Trustee.*

71 1851
71 5191

A state court has concurrent jurisdiction of an action to determine the title to property taken in possession by a trustee in bankruptcy as a part of the bankrupt's estate.

TROVER, against the trustee in bankruptcy of V. T., for wagons, harnesses, etc. Facts agreed, and case transferred from the May term, 1901, of the superior court by *Pike, J.*

The defendant took possession of the property as assets of the bankrupt's estate, and sold it in the course of his duties as trustee. The defendant's motion to dismiss the action for want of jurisdiction was denied, and he excepted.

Hamblett & Eaton, for the plaintiff.

Osgood & Osgood and Isaac L. Heath, for the defendant.

BLODGETT, C. J. The question raised by the agreed facts is not one of jurisdiction, but of title. The plaintiff's action is not one of replevin, but of trover. It concerns, not the judicial custody or lawful possession of the property in controversy, but only the trial of the title to it. The jurisdiction conferred on the federal courts in actions of this character between trustees in bankruptcy and strangers to the bankruptcy proceedings is not exclusive, but, on the contrary, it is well settled that in all questions of title to property derived through such proceedings the state courts have concurrent jurisdiction. *Heath v. Shaffer*, 93 Fed. Rep. 647, 650; *Hicks v. Knost*, 94 Fed. Rep. 625; *Norcross v. Nathan*, 99 Fed. Rep. 414, 421; *Eyster v. Gaff*, 91 U. S. 521, 525, 526; *Clafin v. Houseman*, 93 U. S. 130, 134; *Bardes v. Bank*, 178 U. S. 524, 532, 533; *White v. Schloerb*, 178 U. S. 542, 546; *Gage v. Dow*, 58 N. H. 420; *Hanson v. Herrick*, 100 Mass. 323, 326; *Otis v. Hadley*, 112 Mass. 100, 105, 106; *Goodrich v. Wilson*, 119 Mass. 429, 434;

Bump B'k'cy (11th ed.) 139, 140, and authorities cited; 2 Am. & Eng. Enc. Law 88; 16 *Ib.* (2d ed.) 755, *cc*; 88 Am. Dec. 675, note.

Exception overruled.

All concurred.

Merrimack, }
Dec. 23, 1901. }

FRANKLIN v. DURGEE & a.

71	186
71	621

71	186
72	97
72	100
72	153
72	154
72	388

71	186
74	308
74	424
74	426

Whether an obstruction of the natural flow of surface water by a landowner in the use of his premises constitutes an actionable wrong when injurious to another, depends upon the reasonableness or unreasonableness of such use, which is a question of fact, to be determined at the trial term in view of all the circumstances of the particular case.

A bill in equity alleging that the defendants have constructed upon their land an embankment which causes surface water to flow back upon the plaintiffs' premises, and that such use is unreasonable, states a sufficient ground for equitable relief.

Where a public highway is damaged by the unreasonable obstruction of surface water upon adjoining premises, the municipality is entitled to the same relief that a private landowner would have for the redress of a similar injury.

BILL IN EQUITY, by the city of Franklin, alleging in substance that the defendants are the owners of land adjoining a highway in the city; that surface water naturally flows across the highway and on to the defendants' land; that many years ago the plaintiffs built culverts across the highway, which conveyed the water on to the defendants' land in the natural depressions; that the defendants have placed earth on their land next to the highway, which has stopped the flow of the water, causing great damage to the highway; that stopping the flow of the water in the way described is an unreasonable use by the defendants of their land; and that for the proper and suitable maintenance of the highway the surface water should be allowed to pass on to their land. The prayer is that the defendants be ordered to remove the obstruction and be enjoined from obstructing or interfering with the flow of the water. The defendants filed a demurrer to the bill, which was overruled at the April term, 1901, of the superior court by *Peaslee, J.*, subject to their exception.

Edward G. Leach, for the plaintiffs.

Barron Shirley, for the defendants.