

Case No. 3,544.

DALLAS V. FLUES ET AL.

{28 Leg. Int. 325;<sup>1</sup> 8 Phila. 150; 1 Leg. Gaz. Rep. 288; 19 Pittsb. Leg. J. 173.}

Circuit Court, E. D. Pennsylvania.

Oct. 2, 1871.

BANKRUPTCY—DISALLOWANCE OF PROOF—RETRANSFER OF COLLATERALS.

Where the court disallows proof of indebtedness against bankrupt's estate, they will not also compel a re-transfer of collaterals.

{Appeal from the district court of the United States for the eastern district of Pennsylvania.

{This was a bill in equity, by George M. Dallas, trustee of the estate of Peter Conrad, a bankrupt, against Flues & Co., to recover collaterals held by the defendants for claims which were disallowed in proof.}

Chas. S. Pancoast and James E. Gowen, for complainant

C. H. Sidebotham, for respondents.

MCKENNAN, Circuit Judge. The specific relief sought by the complainant is the release, surrender and conveyance to him, as trustee of the estate of Peter Conrad, a bankrupt, of certain real estate and personal securities conveyed and transferred to the respondents by the bankrupt to secure the payment of several notes endorsed by him and discounted by them. It is asked on the ground that the respondents have, proved their whole claim against the bankrupt, and that this is a conclusive election by them to abandon their securities, and that they cannot assert their claim upon the bankrupt's assets until they surrender such securities to the complainant for the benefit of all the creditors.

As the complainant, by his appeal from the decree of the district court, has invoked the judgment of this court upon the validity of the respondents' claim, and as it has been adjudged to be void and not entitled to allowance, it is unnecessary to pass upon the complainant's right to the relief prayed for. Transfer of their securities to the complainant, or disallowance of their debt, are the alternatives, a choice of which it is sought to impose upon the respondents, but, as the last one has been enforced upon them by the decree in the appeal, the prayer in the bill cannot be granted. The bill is therefore dismissed.

<sup>1</sup> [Reprinted from 28 Leg. Int. 325, by permission.]