9FED.CAS.—45

Case No. 5,050.

IN RE FRANK.

[5 Ben. 164;[1] 5 N. B. R. 194.]

District Court, N. D. New York. May, 1871.

POSTPONING PROOF OF DEBTS—VOTING FOR ASSIGNEE—TRANSFER OF DEBTS—POWER OF ATTORNEY.

1. Although the proof of a debt in due form has been regularly filed with the register, and by him entered as satisfactory, yet if fraud in relation thereto is offered to be shown, the register may receive such proof before the election of assignee.

[Cited in Re Strachan, Case No. 13,519.]

2. If several creditors sell and assign their debts to one assignee after they are proved in bankruptcy, they have no further business in court, and though the proceedings be carried on in their names, the actual owner must control the debts, vote upon, and receive the dividend thereon, and can cast but one vote.

3. If a power of attorney is given to a firm, and not to either member of it, one member alone is not authorized to vote upon it in the choice of an assignee.

[In bankruptcy. In the matter of Manassa Frank.]

[2] [I, Benjamin G. Baldwin, one of the registers of said district, do here certify, that in the course of the proceedings in said matter before me, certain questions arose pertinent to the said proceedings, and were desired by counsel to be certified to the court. At an adjourned first meeting of creditors, held on the thirtieth of March last, for the election of an assignee, E. M. Holbrook appeared as attorney for petitioning creditor, and S. A. Beman appeared with letters of attorney from sundry creditors, proofs of whose debts had been filed and entered at a previous meeting; and S. Foote also appeared with letters of attorney from several other creditors whose debts had also been before proved and proofs filed. Mr. Holbrook also had letters of attorney from several creditors, proofs of whose debts had been filed by Mr. Beman, revoking their former letters of attorney given to Mr. Beman and G. A. Seixas, Esq., appeared from New York as counsel with Mr. Beman, and in behalf of the creditor firm of Eldridge, Dunham & Co. of New York, proofs of whose debt had been filed by Mr. Beman, and moved that sundry debts, represented by Mr. Holbrook and by Mr. Foote, be postponed for investigation before the assignee, and be not voted upon; and charged that since the adjournment of this meeting, which was held on the third of March, then current, the brother and friends of the bankrupt, acting in his interest, had been to see the various creditors, and represented to them that the estate of the bankrupt would not pay fifty cents on the dollar of his indebtedness, and had made persistent efforts to induce them to compromise and stop these proceedings in bankruptcy; and that they had already succeeded in buying up, perhaps with the bankrupt's money, a large number of the debts now represented by Mr. Holbrook and

Mr. Foote, some before and some since proof was made in this proceeding, and which, he charged, was done for the purpose of controlling these proceedings and influencing the election of an assignee, and was, therefore, in fraud of the bankrupt act, and was a sufficient reason for postponing such debts and not allowing them to be voted upon, and he proposed to prove such charge by reading affidavits and making oral proof. Said Holbrook & Foote objected to such postponement, and insisted that nothing had been done in fraud of the bankrupt act; that the financial troubles of the

bankrupt were destroying his health and mind, and that his friends, on that account, had examined carefully into the situation and value of his estate, and had offered the creditors to advance the money and pay as large a per cent upon their debts as they believed could be realized upon a settlement in bankruptcy, with the hope that his mind might be relieved, and he be enabled to resume business; that several of the creditors had accepted the proposition made, and sold and assigned their debts before proof was made to Delos McCurdy, who, as such assignee, had made proof of the same in due form and filed with the register, and several who had made proof of their debts and had the same filed, had also sold and assigned them, and said Holbrook & Foote insisted that the proof of both such classes of debts, being in due form and regularly filed with the register, and by him entered as satisfactory, they cannot now be postponed, but should be voted upon and may be investigated before the assignee hereafter. I decided that, inasmuch as the offer was to show that the whole proceeding, in reference to the sale and transfer of such debts were in fraud of the bankrupt act, I would hear the proof, and if Messrs Holbrook & Foote desired to make proof in opposition, I would give them reasonable time to prepare the same, to which ruling said Holbrook & Foote excepted, and desired that the same should be certified to the judge. The counsel then agreed that the meeting should be adjourned to hear such proof, and that they would serve copies of affidavits upon each other, and the meeting was thereupon adjourned to the twenty-first day of April at one P. M. At such adjourned meeting the same counsel appeared as before, and affidavits were read and arguments made in support of the respective positions of counsel, and, after hearing the same, I decided that the proofs did not sustain the charge of fraud upon the bankrupt act, and that, as all the proof of debts on file was in due form, and nothing appeared to excite suspicion of their want of validity, I would proceed to receive votes for the election of an assignee upon all the debts represented, to which decision and ruling the counsel in favor of the postponement of debts excepted, and desired the same to be certified to the judge.

{Before proceeding to vote, it was agreed by all the counsel that certain debts represented by Mr. Holbrook and by Mr. Foote, proofs of which had been filed by the creditors, were assigned to and now owned by Delos McCurdy, in addition to the debts proved by him as assignee, and that such of those creditors as had issued letters of attorney to Messrs. Beman & Brennan, had issued new letters of attorney to Messrs. Magone & Holbrook, or either of them, and said Holbrook & Foote claimed the right to give one vote upon each of such debts in the name of the assignor, to which Mr. Seixas and Mr. Beman objected, and I sustained the objection, deciding that when a creditor sold and assigned his debt after it was proved in bankruptcy, he had no further business in court; that, although the proceedings must be carried on in his name, the actual owner and assignee must control the debt, vote upon it and receive the dividend, and that I

should, therefore, receive only one vote from Mr. McCurdy or his attorney, and should decline receiving any vote from Mr. Holbrook or Mr. Foote upon those debts represented by them, and which were assigned to Mr. McCurdy, to which decision and ruling Mr. Holbrook and Mr. Foote excepted, and asked that it be certified to the judge.

{Thereupon I proceeded to take the vote for assignee, with the following result, viz: Eight creditors, whose debts amounted to four thousand and twenty three dollars and thirteen cents, voted for Daniel F. Sofer of Malone, Franklin county, New York. Five creditors, whose debts amounted to nine thousand nine hundred and two dollars and thirty-eight cents, voted for Charles E. Clark, of Ogdensburg, New York. Nineteen claims, assigned after proof, amounting to twelve thousand two hundred and twenty-eight dollars and ten cents, were excluded from being voted upon, under my ruling aforesaid. One debt of one hundred dollars and seventy-seven cents proved, was not represented, and one debt proved of two hundred and five dollars and twenty-one cents, represented by Mr. Beman, but the letters of attorney produced, although addressed to Mr. Beman individually, contained authority in the body of it to his law firm of Beman & Brennan, not to either of them, to vote, and the other partner not being present, I declined to receive a vote upon that debt There was no choice of an assignee, no one receiving a greater part, both in value and number of votes, and there being opposition, I certify the result into court}[3]

HALL, District Judge. Upon consideration of the report of B. G. Baldwin, Esq., one of the registers of this court, dated May second, eighteen hundred and seventy-one, by which it appears that in the proceedings before him for the choice of an assignee herein, sundry questions arose and were desired to be certified for the opinion and decision of the judge of this court, but which were temporarily decided and passed Upon by the said register, and that, under the decisions of the register, the creditors of such bankrupt proceeded to the selection of an assignee; that on taking the votes of the creditors who had proved their debts, and were present or represented at the said meeting for the choice of an assignee, it appeared that there was no choice of an assignee by reason of the failure of a majority in number and value of such creditors to vote for the same person as

assignee; and, also, upon consideration of the affidavit and statement presented in connection with such report of the said register, It is now ordered, adjudged and decreed, that the several decisions of the register upon questions so certified by him, and the other questions arising in the course of such proceedings, as stated in his report, be, and the same hereby are approved and confirmed; and that Charles O. Tappan, Esq., of Potsdam, in the county of St Lawrence, counsellor at law, be, and he is hereby appointed assignee of the said Manassa Prank, in these proceedings, in pursuance of the statute in such case made and provided.

[1] {Reported by Robert D. Benedict, Esq, and here reprinted by permission.}

[2] {From 5 N. B. R. 194.}

[3] {From 5 N. B. R. 194.}

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