

Case No. 5,208.

GALVIN v. BOYD.

[4 Wkly. Notes Cas. 288; 25 Pittsb. Leg. J. 14.]

Circuit Court, E. D. Pennsylvania.

July 21, 1877.

BANKRUPTCY—PAYMENT OF DEBT AFTER PROCEEDINGS BEGUN.

[Where a note is given in payment of a book account, after a petition in bankruptcy is filed against the payee, but before” the adjudication, and the note at maturity is paid to a bank which holds the same, this is a discharge of the maker, and the assignee in bankruptcy cannot maintain a suit against him for the amount of the note.]

Rule for judgment for want of a sufficient affidavit of defence. Assumpsit by the assignee in bankruptcy of A. Benton & Co. upon a book account and promissory note, copies of which were filed. Upon January 31, 1877, the petition in bankruptcy was filed, and in March, 1877, the firm of A. Benton & Co. were adjudicated bankrupts. In re Benton [Case No. 1,333]. The book account contained charges for goods sold and delivered during August and September, 1876. The note for like amount was dated February 20, 1877, after the petition had been filed. The affidavit of defence alleged that the note was given in payment of the book account, and that a few days before its maturity the defendant was notified by the Union National Bank that it held the note and demanded payment, and that he paid the note at maturity, and now had it in his possession.

Prichard & Purves, for the rule.

This whole transaction took place after the filing of the petition, which is notice to all the world. The assignee is entitled to recover. *Mays v. Bank*, 14 P. F. Smith [04 Pa. St.] 74; *Fluck v. Hope*, 1 Wkly. Notes Cas. 42; *Baird v. Adams*, Id. 144; *Turner v. Shenkmeyer*, Id. 266.

Mr. Stover, contra.

CADWALADER, District Judge (orally). The case of *Mays v. Bank*, supra, was decided on the authority of *Wickershain v. Nicholson*, 14 Serg. & R. 118, which is not law here, because not founded on the present bankrupt act [Act March 2, 1867 (14 Stat. 517); amended by Act June 22, 1874 (18 Stat 178)]. Rule discharged.