

EX PARTE HALE ET AL.

Case No. 5,910.  
[5 Law Rep. 403.]

Circuit Court, D. New Hampshire.

Dec., 1842.

BANKRUPTCY—CLAIM OF SOLICITORS FOR MONEY ADVANCED FOR  
EXPENSES—PETITION IN INVITUM—FEES AND COSTS.

1. *Held*, that the solicitors of a voluntary bankrupt, who advanced the expenses at his request, to enable him to obtain his discharge,—a portion of which were rendered necessary in consequence of the proceedings of an objecting creditor,—were not entitled to any relief for such expenses, and for their services, against the assets of the bankrupt.
2. It seems, that a creditor, who incurs costs and expenses in prosecuting a petition against a bankrupt in invitum, to have him decreed a bankrupt, may be remunerated for the same out of the assets of the bankrupt.

This case was adjourned into this court from the district court of New Hampshire district. The petition was as follows: “Respectfully represents to the said honorable court, John P. Hale and John H. Wiggins, attorneys and counsellors of said court and partners that they were solicitors in the case of the

said Palmer, and in such capacity have advanced and expended large sums of money at different times, since the filing of the petition of the said Palmer for the benefit of the general bankrupt law [of 1841; 5 Stat. 440], at his request, to enable him to obtain a certificate of discharge under said law; that said Palmer is indebted to the said Hale and Wiggins in a further sum for services as solicitors; that said Hale and Wiggins made said advances and expenditures and rendered the said services with the understanding that the assets of the said bankrupt's estate would be appropriated to reimburse said solicitors, and secure their fees aforesaid; that a great part of the advances and expenditures aforesaid were made necessary in consequence of the proceedings of an objecting creditor, who several times, to the great delay and hindrance of the said bankrupt; obtained from the court orders for the taking of testimony and the examination of the bankrupt; that at such taking of testimony on three several occasions, the said solicitors were present at the request of the bankrupt, and were present also at the examination of the bankrupt; at his like request; that said objecting creditor, after the taking of said testimony and examination at the time of the hearing of the petition for discharge of the said bankrupt, withdrew his objections and appearance without in any way having made provision for the payment of the costs of the bankrupt, which he had been subjected in consequence of his proceedings, in objecting to said bankrupt's discharge, although the court had directed; and in all cases made it a rule that every objecting creditor should, at the time of filing his objections, give a bond for the payment of all costs which should be awarded against him by said court, in consequence of said objections; that said bankrupt is advanced in years and utterly worthless; that said solicitors have no knowledge of any way of securing themselves now or in time to come, unless from the assets of the bankrupt's estate. The said solicitors therefore pray for relief, and move this honorable court, that so much of the assets of the said bankrupt's estate may be allowed to them, as will compensate them for their said services, and reimburse them for the advances which they have made according to the account hereto annexed. Mem. The bankrupt has obtained his certificate of discharge." Upon this petition, it was ordered, that the question arising upon it be adjourned into this court. The case was now submitted by the petitioners without argument.

STORY, Circuit Justice. The petitioners are the solicitors of William Palmer in bankruptcy, who has been declared a voluntary bankrupt, and has been discharged by a decree of the district court from his debts provable under the bankruptcy. They ask payment to be made to them, out of the assets of the bankrupt, for all the disbursements, which they have made, and the fees, which they have earned, as solicitors of Palmer, in carrying on the proceedings for his benefit. Whether the assignee, or the creditors of the estate have had notice of this application or not, does not appear upon the record, although certainly no order ought to be made, affecting the assets of the bankrupt in this case, without a full opportunity of appearing to, and being heard upon the matter of the petition, if they

should desire it, before any order should be made. But without inquiring into the circumstances, I have no difficulty in pronouncing, that the petitioners are not entitled to any such relief as they ask, against the assets of the bankrupt. In respect to that portion of the costs and expenses, which have been incurred by the opposition and objections of a creditor of the bankrupt, those costs and expenses were properly chargeable upon him, if, under all the circumstances, the district court should think he ought to pay them. If it has decided, that the creditor ought not to pay any such costs and expenses, then the solicitors are entitled to none, and must look exclusively to their client for reimbursement. If the district court has not been applied to to decree such costs and expenses against the creditor, the default is on the part of the solicitors, or their client, in not procuring such decree, or in not taking security for the costs and expenses, according to the rules of the court—Qua canque via data est, the solicitors are not entitled to any remedy against the assets thereof.

As to the other expenses incurred by the solicitors in prosecuting the voluntary petition of the bankrupt to obtain the benefit of the bankrupt act of 1841, c. 9, I can perceive no ground, upon which payment can be decreed therefor out of the assets of the bankrupt. They were incurred for his sole personal benefit, and not for the benefit or at the instance of his creditors. He, and he only, therefore, ought to bear them. It would; or at least might, have been different, if the costs and expenses had been incurred by a creditor in prosecuting a petition against a bankrupt, in invitum, to have him decreed a bankrupt; for then and in such a case the proceedings and decree might be said to be for the benefit of all the creditors. But, here, there is no ground upon which the court can say that the costs and expenses are to be a charge upon the assets in bankruptcy. I shall direct a certificate accordingly to be sent to the district court.

The certificate was as follows: Ex parte Hale and Wiggins, Petitioners in the Bankruptcy of William Palmer. It is ordered by the court, that the following certificate be sent to the district court, upon the question adjourned into this court, and in answer thereto, namely: It is the opinion of the circuit court, that the petitioners have no

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right to have the costs, fee, expenses, and disbursements, stated in their petition, paid out of the assets of the said William Palmer, the bankrupt; but that the same are a personal charge, to be borne by him exclusively.