

Case No. 6,985.

{18 N. B. R. 299.}¹

IN RE HYMAN ET AL.

District Court, S. D. New York.

July 2, 1878.

BANKRUPTCY—RESOLUTION OF COMPOSITION—WHAT PROVISIONS ARE BINDING.

1. A provision of a resolution of composition to the effect that upon the delivery of the composition notes all the property in the hands of a voluntary assignee of the bankrupts shall be delivered to them and the assignee discharged from responsibility is wholly nugatory so far as it purports to affect the assignee's responsibility; or the rights of creditors under the assignment, otherwise than as the confirmation of the composition and release of the creditor's claims by payment of the composition may necessarily affect them.
2. Confirmation of the resolution of composition does not give the assent of the court to what such provision vainly attempts to affect.
3. Confirmation of a resolution containing a provision that the proceedings in bankruptcy may be discontinued at any time after delivery of the notes does not bind the court to allow such discontinuance, unless sufficient grounds therefor are shown to exist when the application is made.

{In bankruptcy. In the matter of Solomon Hyman and Moses S. Hyman.}

B. F. Foster and Otto Horwitz, for motion.

Edward T. Bartlett, contra.

CHOATE, District Judge. Motion to confirm composition. I do not feel at liberty to reverse the decision of the great majority of the creditors in this case—that the composition is for the best interests of creditors—on any of the grounds urged by the learned counsel for the opposing creditors. The fifth resolution is objected to, which provides that upon the delivery of the composition notes all the property of the debtors which is or has been in the hands of the voluntary assignee of the debtors shall be delivered to the bankrupts, and the said assignee discharged from all responsibility under his office as assignee. This resolution is wholly nugatory so far as it purports to affect the responsibility of the voluntary assignee, or the rights of creditors under the trusts of that assignment, by the proceedings in this court otherwise than as the confirmation of

the composition, and the release of the claims of creditors by payment of the composition may necessarily affect them. But this resolution is not a substantive part of the proposal of composition which the creditors have accepted, and the confirmation of the resolutions does not give the assent of this court to what the fifth resolution vainly attempts to affect. So the sixth resolution, which provides that any time after the delivery of the notes the proceedings in bankruptcy may be discontinued, does not, if the resolutions are confirmed, bind the court to allow such discontinuance, unless, when the same is applied for, sufficient grounds therefor shall be shown to exist. Composition confirmed.

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