

Case No. 8,662.

{19 N. B. R. 452.}¹

IN RE MCBRIDE.

District Court, E. D. Michigan.

July 1, 1878.

SUBROGATION—CHECK RECEIVED BY REVENUE OFFICER—RIGHTS AGAINST DRAWER.

A United States revenue officer must account to the government, in lawful money, for all sums received by him as such officer. And, if he make good to the government, by payment, the amount of a dishonored check which he had received from a government debtor, he is a guarantor on behalf of such debtor, of a most meritorious character, and will be entitled to be subrogated to all the rights of a guarantor in any proceeding to collect the amount.

The register certified that on the 25th day of January, 1878, Charles R. Wing proved on behalf of, and in the name of the United States of America, a claim against said bankrupts [James G. McBride, Caleb Ives, and Seth L. Carpenter] in the sum of two thousand and ninety dollars and forty cents, for revenue stamps sold by said Wing as the deputy of H. B. Rowson, collector for the Third revenue district of Michigan; that the assignee instituted proceedings under general order 34 for the re-examination of the claim; pending which, Wing filed a petition to be subrogated to the claim as proved in favor of the United States.

Both proceedings were heard together, testimony was taken, and the parties heard by counsel; the assignee by Mr. T. Romeyn, and Wing by Mr. A. Russell. The register entered an order dismissing the petition for the re-examination of the claim, and that Wing be subrogated to the rights and interests of the United States; which order, at the request of the assignee, the register certified into court for determination by the district judge.

By HOVEY K. CLARKE, Register:

The principle of subrogation is well stated in the article under this title in Johnson's Cyclopaedia, thus: "Whenever a person secondarily liable for a debt pays the same, the demand is not thereby absolutely discharged; but he, at once, by the operation of the equitable doctrine, succeeds or becomes subrogated to all the rights, remedies, and securities which the creditor held against the debtor primarily liable, and may enforce the same as a creditor against such debtor in order to reimburse himself for the outlay which he has made on behalf of that party." The illustrations usually given of the application of

this principle are those of mortgagees, sureties, and guarantors.

In this case, Wing, as deputy collector, had sold to the bankrupts revenue stamps to the amount of two thousand and ninety dollars and forty cents. At the time of the sale of one thousand dollars of these stamps, two checks on a firm of bankers in Detroit, drawn by C. Ives, one of the bankrupts, were delivered to Wing, one for five hundred dollars and one for five hundred and ninety dollars and forty cents, both of which were dishonored on presentation. Stamps to the amount of one thousand dollars more were delivered on the day of the failure of the bankrupts, to their shipping clerk, on his statement that Mr. Ives was ready to pay for them. Much of the testimony taken seems to have for its purpose to show some arrangement between the bankrupts, Mr. T. E. Wing, the father and bondsman of the deputy collector, and Mr. C. R. Wing; but, whatever it shows, the fact is left clear that stamps to the value claimed were delivered to the bankrupts, and they have not been paid for. The testimony also shows that the government makes no claim against the bankrupt's estate, because the amount has been assumed and paid by Mr. Wing, the deputy collector, either out of his own money, or by means furnished by his father, who is his bondsman. He made this payment because he had become legally liable for the value of the stamps which he had delivered to the bankrupts, and for which they had not paid. This liability results from his duty as a public officer to take nothing but money. That public officers do constantly take checks upon banks as money, and that their own and the convenience of business men dealing with them is thereby promoted, is, probably, well known. But if they should refuse to take anything but coin, or the currency furnished by the government and should then be imposed upon by counterfeits, their liability would be the same as it is upon a protested check; and thus whatever they take, they become, as public officers, guarantors to the government, on behalf of the parties with whom they have dealings, that that which they treat as money shall produce money to the government. A collector in the position now occupied by Mr. Wing is a guarantor of the most meritorious character. If the government were now prosecuting this claim, it would be paid in full, and it seems to me inequitable to allow the general creditors of the bankrupts' estate to be benefited at the expense of the deputy collector, who, to make good his guaranty to the government, has assumed and paid the sum owing by the bankrupts' estate.

T. Romeyn, for assignee.

A. Russell, for claimant.

BROWN, District Judge, approved the opinion of the register, and directed an order to be entered subrogating Wing to the rights of the United States as a preferred creditor.

¹ [Reprinted by permission.]