IN RE MANY ET AL.

Case No. 9,054.
{17 N. B. R. 514.}[1]

District Court, S. D. New York. March 29, 1877.

BANKRUPTCY—BUSINESS PAPER—ACCOMMODATION PAPER—USURY—REPRESENTATION OF CHARACTER OF PAPER TO PURCHASER—ADVANCES BY FACTORS.

1. Where an assignee in bankruptcy moves to expunge a claim on the ground of usury, alleging that a promissory note on which the claim is founded was made or endorsed by the bankrupt for the accommodation of another person and took its inception in the hands of the present holder, who obtained the same at a discount of more than the lawful rate of interest, held, that the assignee must show clearly that the note was accommodation paper.

2. Where it appeared that the bankrupts were factors for a corporation, and received goods on consignment for sale on commission, and were in the habit of giving their notes to the order of the corporation by way of advances on consignments; and it appeared that some of the notes on which this claim was founded were of that description, and were purchased by the present holder from one of the bankrupts, who was also treasurer of the corporation, at a discount of 18 per cent, per annum; but it did not appear whether these particular notes, or any of them, were given for an excess over the value of goods consigned, *held,* that the assignee had not shown these notes to be accommodation paper.

3. It seems that notes given by factors, by way of advances to their principals, on the credit of goods consigned, are business paper and not accommodation paper.

4. Where one member of a firm makes representations to the purchaser of commercial paper bearing the firm name, to the effect that it is business paper, the firm or, their assignee in bankruptcy is estopped from setting up that it is accommodation paper and void for usury.

5. An endorser of a note is in any event liable to his endorsee only for the amount actually paid by the endorsee, with lawful interest thereon, and not for the face value of the note.

Motion by the assignee in bankruptcy of the firm of Many & Marshall, to expunge or reduce a proof of debt by one Joshua A. Clark upon certain notes. The bankrupts {Francis Many and James Marshall}, composing the firm of Many & Marshall, prior to their failure, had been hardware dealers in New York. The notes in question had all been either made or endorsed in the firm name, by Francis Many, one of the bankrupts. The assignee claimed that the notes in question were made or endorsed by Many for accommodation of the other parties to the paper; that they had taken their inception in the hands of Clark (the claimant), and as he had purchased them at a greater rate of discount than 7 per cent, per annum, they were void for usury. The assignee also claimed that, on such notes as Many & Marshall were liable upon as endorsers, the claimant could

in no event prove for more than lie had actually paid for the notes. Part of the notes were drawn by Francis Many, one of the bankrupts, in the name of Many & Marshall as makers, payable to the order of the Trenton Lock Company. The Trenton Lock Company was a New Jersey corporation, doing business as manufacturers of locks at Trenton. Francis Many was treasurer of this corporation. He endorsed these notes in the corporate name, and transferred them to Clark at a discount of 18 per cent, per annum. There was evidence to the effect that Many had represented to Clark, at the time of the transfer of the notes, that they were business paper. It appeared that Many & Marshall had acted for some time as factors for the Trenton Lock Company, receiving goods from the company for sale on commission. The firm had been in the habit of advancing money to the company from time to time, by notes similar to those in suit. There was evidence going to show that at the time the notes were given the firm had already issued notes to the order of the Trenton Lock Company, to an amount greatly in excess of the value of the goods held by the firm under consignment from the Trenton Lock Company.

William B. Hornblower, for assignee.

William G. Choate, for claimant.

BLATCHFORD, District Judge. I am of opinion, on the evidence, that the five notes made to the order of the Trenton Lock Company were business paper in the hands of the payees, and not accommodation paper. If they or any of them were given for an excess over the value of goods consigned, it is for the assignee in bankruptcy to show that clearly, and this is not done.

In addition, as to those five notes, I think the evidence shows that Mr. Clark purchased them on the representation by Many that they were business paper, and not accommodation paper.

In so representing, Many must be held to have acted for his firm. If his representation was untrue, he was committing a fraud on Mr. Clark.

His representation bound his firm. Story, Partn. § 108, and cases cited in note 2; Griswold v. Haven, 25 N. Y. 595.

It having been represented by the firm that the five notes were business paper, and not accommodation paper, and Mr. Clark having parted with his money on the faith of such representation, the assignee in bankruptcy of the firm cannot now deny the truth of such representation, so as to work an injury to Mr. Clark.

I therefore decide that Mr. Clark is entitled to prove on the notes A, D, M, N, and P. As to notes C and F, it is for the assignee to show that they were accommodation notes in the hands of Many & Marshall. This has not been done. Mr. Clark is therefore entitled to prove on those notes. As to note E, I think the evidence shows that it was purchased by Mr. Clark on the representation by Mr. Many that it was business paper, and that Mr. Clark is entitled to prove on it. It is contended that Mr. Clark cannot prove upon notes

C, E, and F, above mentioned, or upon notes B, G, H, I, J, K, L, and O, all being notes on which Many & Marshall as a firm, if liable, are liable only as endorsers, for more than the amount he actually paid for the notes respectively, he having taken more than lawful interest in each instance. I think that is the law. Cram v. Hendricks, 7 Wend. 569; Judd v. Seaver, 8 Paige, 548.

{For subsequent proceedings in this litigation in reference to allowance to assignee, see Case No. 9,053.}

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