Case No. 9,353a.

IN RE MAYO.

{4 Hughes, 384.}

Circuit Court, E. D. Virginia. June, 1882.[1]

BANKRUPTCY—LIABILITY OF SURETY—SIGNATURE TO BOND—JURISDICTION.

{1. Where a bond is given pursuant to an order made in bankruptcy proceedings, and the order itself is copied into the bond, as presented to the sureties for signature, the sureties are affected with notice of all that is contained in the order, and it is immaterial what the obligee may have told them as to the legal liability created by the bond.}

{2. Where, pursuant to an order made in bankruptcy proceedings, the bankrupt has been allowed to retain possession of certain property on giving a bond with sureties, the court has jurisdiction, in case of a breach of the condition of the bond, to proceed against the sureties summarily by petition in the bankruptcy case: for, by signing the bond, they submitted themselves to the court's jurisdiction.}

{3. The fact that the assignee in bankruptcy, who was the obligee in the bond, first attempted to enforce it by an action at law, and that a verdict was rendered for defendants, which was set aside by the court and a new trial granted, would not operate to prevent the subsequent proceeding to enforce the bond by petition in the bankruptcy case, for, after the granting of a new trial, the case stood as if no trial had ever been had.}

{Appeal from the district court of the United States for the Eastern district of Virginia.

{In the matter of D. C. Mayo, a bankrupt. The appeal is from an order made by the district court, upon the petition of the assignee, Garnett, enforcing a bond against the bankrupt and his sureties, W. K. Watts and Lawrence Lottier. Case No. 9,353.

{For prior proceedings in this litigation, see Case No. 5,245a.}

WAITE, Circuit Justice. Upon the merits, I am entirely satisfied with the conclusion reached by the

district judge. The defense relied on is not established by the evidence. The bond was conditioned as the order of the court required. The assignee had no authority to accept any other. As the order of the court was copied into the bond, the sureties are charged with knowledge of what the assignee was required to get before he delivered the property. It is clear, therefore, that what the assignee may have said as to the legal effect of the obligation to be assumed by the sureties is wholly immaterial. There can be no doubt as to the meaning of the language used to express the obligation.

The evidence does not satisfy me that the assignee is chargeable with knowledge of 1263 the alleged agreement between Watts and Mayo that the bond was not to be delivered unless signed by Winston. He, undoubtedly, did suppose Winston would become one of the sureties, but there is nothing to show that he understood that Watts was not to be bound unless Winston signed also. The understanding between Mayo and Watts is immaterial unless the assignee knew of it.

I think, also, that the district court had jurisdiction to proceed summarily as in bankruptcy to enforce the bond. The bond was taken by the bankrupt court in course of the administration of the bankrupt's estate. It was in the nature of a receiptor's bond, or a stipulation in admiralty, and took the place of the things which were delivered to Mayo on the acceptance of the security. In this way the sureties voluntarily made themselves parties to the bankruptcy suit, and submitted to the summary process of the bankruptcy court. In bankruptcy the court administers on the estate. The assignee is an officer of the court, charged with certain duties. The court must administer the estate according to law, and its proceedings are subject to examination and review by the circuit court under its supervisory jurisdiction in bankruptcy matters. Every one who contracts with the court in the course

of the administration submits himself to the summary process which the law has provided to bring about a prompt settlement of bankrupt estates. Those who contracted with the bankrupt stand in no such position. Everything which depends on what was done before the bankruptcy, or afterwards, not connected with the administration, must be treated as outside of the bankruptcy proceedings, and governed accordingly. But all contracts with the court sitting in bankruptcy are in effect part of the proceedings in the bankruptcy suit. This is in accordance with the ruling of Judge Bond in Rosenbaum v. Garnett {Case No. 12,053}, from which I am not disposed to depart. The fact that, after the order of the court requiring the assignee to proceed with the collection of the bond, a suit on the common-law side of the court had been began, did not prevent proceedings for the same purpose under the summary jurisdiction before judgment actually rendered in the common-law suit. The power of the court to set aside the verdict in that suit, and grant a new trial, because the verdict was against the evidence, cannot‘ be attacked collaterally. The new trial having been granted, the case stands as though no trial had ever been had, unless the order for the new trial is set aside in some appropriate form of proceeding instituted for that purpose.

The sureties were not entitled to special notice of the sale of the property after it was surrendered under the conditions of the bond. It was enough that the property was delivered up by the principal on demand, as he was bound to do, and that sufficient public notice of the sale was given. There is no allegation of fraud. It rested in the discretion of the court whether to submit the issues of fact to a trial by jury, or not. I think the court properly declined to allow a jury trial.

The judgment of‘ the district court is affirmed, and an order may be prepared to that effect.

[1] {Affirming Case No. 9,353.}