

## Case No. 9,566.

MILLER v. DELAWARE, L. & W. R. CO.  
[2 N. J. Law J. 50.]

Circuit Court, D. New Jersey.      Sept. Term, 1878.

BANKRUPTCY—ACTION TO RECOVER DEBT DUE  
BANKRUPT—SET-OFF.

[It is no defense to an action by an assignee to recover a debt due the bankrupt that said debt has been claimed by the bankrupt as set-off in a pending suit.]

[This was an action by Miller, assignee in bankruptcy of Wyckoff and others, against the Delaware, Lackawanna & Western Railroad Company. Heard on demurrer to plea.]

To a declaration by an assignee in bankruptcy containing the common counts for money due to the bankrupts, a plea was filed alleging that the defendants, before the filing of the petition in bankruptcy, had begun a suit against the bankrupts in the New Jersey supreme court, and that the bankrupts did claim, by way of set-off in that action, the sum of money claimed in this suit, and for the same cause of action, and that that suit was still pending and undetermined.

A demurrer to this plea was sustained. The plaintiff's counsel cited *Serra e' Hijo v. Hoffman* [30 La. Ann. 67].

Edward Q. Keasbey, for demurrants.

Mr. Keen, for defendants.

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