## Case No. 13,698.

SWIFT v. HATHAWAY et al.

{1 Gall. 417.}[1]

Circuit Court, D. Massachusetts. May Term, 1813.

PAYMENT—DEPOSIT WITH CONSENT OF CREDITOR.

If a debtor deposit money for his creditor with a third person, and the creditor assents thereto, or give the depositary a new credit upon the footing of such deposit, the original debtor is discharged.

{Cited in Wright v. Crockery Ware Co., 1 N. H. 282.

The action {by Jireh Swift, administrator of William Ross, against Stephen Hathaway and John W. Russell} was brought to recover the sum of $3431.87, alleged to be due on balance of account from the defendants to the intestate. On the trial, it appeared that the defendants were commission merchants at New York, and the action was brought to recover the balance due on a sale, made by them, of two thirds of the ship Neptune belonging to the intestate. The sale was made on the 1st of February, A. D. 1810, on a credit of four and six months, and notes were given by the purchasers accordingly. On the 16th of May, 1810, the defendants dissolved their partnership, and due notice was given thereof in the gazettes. John W. Russell, on the dissolution of the firm, was constituted the agent for settlement of all the partnership concerns, and immediately formed a new partnership with his brother Gilbert Russell, under the firm of John W. and Gilbert Russell. The notes were put into the hands of the new firm and collected by them, and duly credited in the account of the administrator; and due notice was given to him of all these facts. In September, 1810, he drew a bill on the new firm for part of the money so collected, which was duly paid. The residue remained in the hands of the new

firm until they failed in the spring of 1811. There was considerable evidence in the cause, to show an express assent and acquiescence on the part of the administrator to the money remaining in the hands of the new firm.

W. Prescott, for plaintiff.

W. Sullivan and Harrison G. Otis, for defendant Hathaway.

STORY, Circuit Justice, in summing up, stated to the jury, that if they were satisfied, that the notes were originally lodged in the hands of J. & G. Russell with the assent of the administrator; or if afterwards he assented to the collection of the money by them, or voluntarily left the money in their hands and ratified their proceedings, the firm of Russell & Hathaway were discharged from all responsibility. If a creditor know that his debtor has lodged money in the hands of a third person for his account, and he assents to the proceeding, or gives a new credit to such person on the footing of such deposit, the original debtor is completely discharged.

The jury found a verdict, without difficulty, for the defendant Hathaway. Russell, the co-defendant, did not appear, and was defaulted. The court ordered a general judgment to be entered, that the plaintiff should take nothing by his writ.

[1] {Reported by John Gallison, Esq.}