

that Levi & Co. were disposing of their property with intent to defraud their creditors. The sheriff took possession of their establishment, seized their entire stock, and turned them into the street. Four days afterwards their notes went to protest, and there is no evidence that they resumed business thereafter. If the firm was not legally extinct, it certainly was stricken with a commercial paralysis. It was unable to meet its obligations as they fell due; it suffered its property to be taken on a charge of fraud which was not denied; it was legally if not actually insolvent. *Webb v. Sachs*, 15 N. B. R. 168; *In re Hauck*, 17 N. B. R. 158; *Harrison v. McLaren*, 10 N. B. R. 244; *In re Ryan*, 2 Sawy. 411.

The case of *Otis v. Cullom*, 92 U. S. 447, relied on by the plaintiffs, can hardly be regarded as controlling. There was in that case no mistake of fact. If a mistake existed it was one of law. After the purchase of the bonds the courts decided that the law did not authorize their issue. There was no guaranty, express or implied, that the law was constitutional. The plaintiff knew the facts and chose to take the risk of the bonds being subsequently declared invalid. In precisely the same manner the defendant here took the risk of all subsequent infirmities.

The questions in this action are by no means free from perplexities and doubt. The weight of authority, however, seems to sustain the positions taken by the defendant.

It follows that judgment should be entered awarding the money in court to the defendant.

#### PHELPS, Jr., v. MERRITT.

(Circuit Court, S. D. New York. February 19, 1883.)

##### SCHEDULE M, § 2504, REV. ST., CONSTRUED.

The words "the whole quantity" (schedule M, § 2504, Rev. St.) refer to merchandise shipped by one consignor from one place and to the particular kind of fruit damaged, and not to the whole invoice aggregating several varieties of fruit.

##### Memorandum of Decision.

*Mr. Jones and Mr. Heath*, for plaintiff.

*Mr. James*, Asst. Dist. Atty., for defendant.

COXE, J. I think the plaintiff is entitled to recover. The fair and reasonable interpretation of the statute is the one recently adopted

by the treasury department. The words "the whole quantity" are now construed "as referring only to the merchandise shipped by one consignor from one place, and to the particular kind of fruit damaged." I have examined with care the authorities cited, and am inclined to follow the decision of Ex-Attorney General MacVeagh, in the *Pohl Case*, (reported in Decisions of the Treasury Dept. Document No. 172, page 239,) as the latest expression on the subject. As I concur, not only in the conclusion reached by him, but also in the reasoning of the opinion, I have thought it unnecessary to enter into any extended discussion of the question involved, which is precisely similar in both cases.

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*In re* WERDER, Bankrupt.

(Circuit Court, D. New Jersey. March 28, 1883.)

**BANKRUPTCY—ASSETS—MEMBERSHIP IN PRODUCE EXCHANGE.**

Membership in a produce exchange is property which passes to the assignee in bankruptcy as assets of the debtor's estate.

Bill of Review.

*A. Marks*, for bankrupt.

*Hamilton Wallis*, for assignee.

McKENNAN, J. The bankrupt is a certificated member of the New York Produce Exchange, and the only question presented by his bill is, whether his membership in that institution is an asset, available to his creditors, through his assignee, or not. If it is, the order made by the district court, of which the bankrupt complains, was right. I regard the question as conclusively settled by the opinion of the supreme court in *Hyde v. Woods*, 94 U. S. 523. Mr. Justice MILLER, speaking for the court, there says:

"There can be no doubt that the incorporeal right which Feun had to this seat when he became bankrupt was property, and the sum realized by the assignees from its sale was valuable property. Nor do we think there can be any reason to doubt that, if he had made no such assignment, it would have passed subject to the rules of the stock board, to his assignee in bankruptcy, and that, if there had been left in the hands of the defendants any balance, after paying the debts due to the members of the board, that balance might have been recovered by the assignee."

It is futile to contest the authoritative nature of this statement by the criticism that it was unnecessary to the decision of the question be-