

time to time, the last renewal being after the adjudication in bankruptcy. The assignee insists that for this reason the debt is not provable. It is thought, however, that under the peculiar phraseology of the bond and in view of the obligation there created, it would be unjust to treat the liability of the bankrupt as that of an indorser simply. At the time of the bankruptcy he was clearly liable on the bond in the event of the failure of the makers of the note to pay. True, his liability had not then become absolute, but the debt existed and the obligation was created before the petition was filed. Legally and equitably the estate is bound by his contract.

The report of the register is confirmed and the proof permitted to remain on file.

In re MERRELL and others, Bankrupts.

(District Court, N. D. New York. March, 1884.)

BANKRUPTCY—DEBTS CONTRACTED BY BANKRUPT AFTER PROCEEDINGS COMMENCED.

A debt contracted by a bankrupt subsequently to the commencement of proceedings against him cannot be proved in bankruptcy.

This is an appeal from a decision of the register sustaining certain proofs of debt. The petition in bankruptcy was filed November 13, 1873. On the twenty-sixth of the same month the bankrupts contracted the indebtedness in question. The adjudication was dated February 27, 1874. The proofs of debt were made February 13, 1875. The creditors contend that their proofs should stand, for the reason that the indebtedness upon which they are founded was due and payable at the time of the adjudication. The assignee insists that they should be expunged because the indebtedness was contracted subsequently to the proceedings in bankruptcy.

Charles F. Durston, for assignee.

Theodore M. Pomeroy, for creditors.

COXE, J. Section 5067 of the Revised Statutes provides: "That all debts due and payable from the bankrupt at the time of the commencement of the proceedings in bankruptcy * * * may be proved against the estate of the bankrupt." The proceedings are commenced (section 4991) when the petition is filed. These provisions were in force at the time the proofs in this matter were presented to the register. The indebtedness upon which the proofs are founded was not contracted until 13 days after the proceedings were commenced. The conclusion follows, therefore, that the proofs should not be permitted to stand. Even before the Revised Statutes, and before the substitution of the words "commencement of proceedings in bankruptcy" for the words "adjudication of bankruptcy" in section 19 of

the bankrupt law, the weight of authority favored a construction limiting the proof of debts to those existing at the time of filing the petition.

The proofs should be expunged.

THE ALINE.¹

(District Court, E. D. New York. December 31, 1883.)

1. SHIPPING — DELIVERY — PERISHABLE CARGO — DISCHARGE IN FREEZING WEATHER—"ACT OF GOD."

A steamship brought a consignment of oranges to New York, where she arrived on December 29th. The weather was so cold as to render it impossible to land oranges without freezing them, and continued below zero for several days. The oranges were landed in spite of the consignee's objection, and their value was for the most part destroyed. *Held*, that the act which destroyed the fruit was not the "act of God," but of man, in discharging the oranges at an unsuitable time.

2. SAME—EXCEPTIONS IN BILL OF LADING—VESSEL READY TO DISCHARGE.

A vessel is not "ready to discharge," within the meaning of a provision in the bill of lading that all goods are "to be taken from along-side immediately the vessel is ready to discharge," when it is impossible for her to discharge without destroying the cargo.

3. SAME—"EFFECT OF CLIMATE."

"Effect of climate," used in a bill of lading, does not apply to the effect of a temporary frost.

4. SAME—NEGLIGENCE.

Where it was proved that there was no necessity to land the oranges at that time, either because other consignees had demanded their cargo, which could not be separated from the libellant's, or because of the engagements of the vessel, it was held to be negligence on the part of the vessel to discharge at that time, and a decree was ordered in favor of the libellant.

In Admiralty.

Jas. K. Hill, Wing & Shoudy, (R. D. Benedict, of counsel,) for libellant.

McDaniel, Wheeler & Souther, for claimants.

BENEDICT, J. This action is brought to recover the value of a consignment of oranges shipped on board the steamship *Aline*, in Jamaica, to be delivered at New York. There is no substantial dispute in regard to the material facts. The oranges were shipped in good order, and arrived in New York in like order. The day on which the steamer arrived at New York, being Wednesday, December 29th, was so cold as to render it impossible to land oranges without freezing them. The weather continued cold, indeed below zero, until the following Monday. The steamer commenced to land oranges on the day of her arrival, and on that and the following Thursday and Friday landed the whole consignment. The necessary consequence was

¹ Reported by R. D. & Wylls Benedict, of the New York bar.