

Prior to the filing of the petition the bankrupts were charged as indorsers on a note for \$1,500, made by one Gaylord. After the filing of the petition, the claimant, who was the holder of the note, received a payment of \$500 thereon and a new note similarly indorsed for the balance, \$1,000. The register found that this transaction was a payment of the \$1,500 note which was thereupon given up. The claimant first proved the \$1,000 note but subsequently offered to surrender it to the assignee and filed a supplemental proof for the balance alleged to be due on the original \$1,500 note. The register found that the \$1,000 note was provable because made and delivered before the actual adjudication in bankruptcy. The question now comes before the court upon exceptions filed by both parties to the report.

*Richard C. Steele*, for claimant.

*Charles F. Durston*, for assignee.

COXE, J. The original and supplemental proof should be expunged. The former, for the reason that the note upon which it is founded was made and delivered after the filing of the petition in bankruptcy; the latter, upon the authority of *In re Montgomery*, 3 N. B. R. 426.

The cases cited by the counsel for the claimant, holding that the taking of a promissory note, does not extinguish the original debt unless by express agreement, have, I think, but little application to a case where the parties sought to be charged are not makers but indorsers, and where, prior to the date of the second note, their legal status is completely changed by the filing of a petition in bankruptcy.

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*In re PEVEAR and another, Bankrupts.*

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

**BANKRUPTCY—FRAUD—ALLEGED RETAINING OF MONEY AND EFFECTS BY BANKRUPT.**

In a proceeding against a bankrupt by his assignee for an alleged retaining of money and effects, fraud being charged and a summary remedy demanded, the court should be clearly satisfied that the accusations of the petition are sustained by the proof.

In September, 1880, the assignees of the above-named bankrupts presented to the court a petition representing that the bankrupts had fraudulently concealed and withheld from them \$10,500 in money, besides a large amount of merchandise. The petitioner's prayer is for an order directing the bankrupt to pay over said sum and return said merchandise. The court thereupon made an order referring it to the register in charge to take proof of the allegations of the petition and report the same to the court with his conclusions

thereon. On the fifteenth of May, 1884, the register made his report, in which he found that no money belonging to the assignees has been withheld by the bankrupts or either of them. The case is now before the court on exceptions filed to the said report.

*Henry M. Field*, for assignees.

*Daniel L. Benton*, for bankrupts.

COXE, J. It cannot be said, upon the evidence submitted, that the register has reached an incorrect conclusion. In a proceeding of this nature, where fraud is charged and a summary remedy demanded, the court should be clearly satisfied that the accusations of the petition are sustained by the proof. The evidence is not of this convincing character. It is contradictory, conjectural, and replete with inaccuracies. It cannot be said that fraud on the part of the bankrupts has been so clearly established that the court would be justified in making the order asked for in the petition.

I do not think that the findings of the register should be disturbed. Exceptions overruled.

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ALLEN *v.* DEACON.

(*Circuit Court, D. California.* July 28, 1884.)

PATENT—UNSTAMPED ARTICLE—INNOCENT INFRINGER—SECTION 4900, REV. ST.

In the case of a patented article which does not bear the required stamp or label, recovery shall not be had upon infringements occurring while the infringer is ignorant of the patent, under the conditions stated in section 4900, Rev. St., but shall be limited to infringements arising after notice.

In Equity.

*W. H. Sharp*, for complainant.

*John C. Hall*, for defendant.

SAWYER, J. The defendant had been employing the patented article in steam-engine condensers manufactured by him for several years prior to 1875, in entire ignorance of the existence of the patent sued on. The patentee did not affix the word "patented" to the article manufactured by him, or to a label attached, or in any other way indicate that it was patented. Several engines in steamers came into the port of San Francisco, having the article manufactured and sold, by authority of the patentee, in their condensers, without any indication that it was patented, and the defendant had often examined them. He was entirely ignorant that there was a patent upon it till the month of June, 1875. While building the condensers of the *Constantine*, at that time, after he had got the larger part of the patented packing in, he was notified that there was a patent upon it. This was the first information he had of the patent. He at once of