

and which had previously been dissolved. An adjudication was made that the two petitioners, "as co-partners and as individuals, are hereby declared and adjudged bankrupt." The other members of the late partnership did not join in the petition, and had no notice of the proceedings, but subsequently a paper was filed, signed by the attorneys of such other partners, and purporting to embody their consent to the filing of the petition. This was dated as of the same day on which the adjudication was made, but it was not presented to, or filed in, the district court until several days after the adjudication. Certain creditors having moved that the adjudication should be vacated, on the ground that the court had no jurisdiction to make an adjudication against the partnership, or against the petitioners as partners, for the want of notice to the other members, and no jurisdiction to adjudge the petitioners bankrupt as individuals, their joinder in one petition being unauthorized, the referee held that the adjudication should be vacated and set aside, and from this ruling the bankrupts bring this petition for review.

Harry L. Taylor and E. L. Falk, for petitioners.  
Clarence U. Carruth, for opposing creditors.

COXE, District Judge. As pointed out by the referee, the practice of the petitioners was irregular, first, in omitting to give the required notice to the members of the co-partnership who did not join in the petition; and, second, in attempting to cure the defect in the adjudication by a subsequent unverified consent, qualified as to its terms, and signed only by the attorneys for the nonjoining members. There seems to be no warrant for this practice. The court does not feel called upon to exert its ingenuity to untangle the snarl in which the petitioners' proceedings are involved, especially when a perfectly simple remedy is open to them. It is like attempting to repair a broken-down machine with the chance that it may continue a rickety and precarious existence when a new machine may be had for less price than it will cost to patch up the old one.

Even if the infirmities of the adjudication can be temporarily cured they are liable to reappear in other tribunals, to vex the court, and, perhaps, to result in causing the discharges which may be hereafter granted to be declared invalid. Assuming that a creditor is in a position to raise the objection, in limine, that a partnership petition cannot be filed in the circumstances shown, it will be time enough to consider the question when proper papers are before the court.

The adjudication is vacated, with leave to the petitioners to take such further steps as they may be advised. Should the petitioners so elect, and the court is under the impression that such will be their wisest course, they may take an order dismissing the petition without prejudice to their right to file a new one by all the firm members.

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In re FT. WAYNE ELECTRIC CORP.

(District Court, D. Indiana. June 29, 1899.)

**BANKRUPTCY—SET-OFF OF CLAIMS.**

Where the trustee of a bankrupt corporation is prosecuting an action against another corporation for goods sold, a creditor of the bankrupt cannot have the value of the property credited on his claim against the bankrupt, and have the action dismissed, on the contention that the goods were bought by him from the bankrupt, and sold by him to the other corpora-

tion, when it appears that he was an officer of the bankrupt corporation, and in charge of its sales, and at the same time an officer and agent of the purchasing corporation.

In Bankruptcy.

J. B. Harper, for petitioner.

Breen & Morris, for trustee in bankruptcy.

BAKER, District Judge. Charles S. Knight filed a petition in this court praying for an order directing the receivers, or their successor, the trustee of the bankrupt corporation, to cancel a mechanic's lien filed on its behalf by the receivers against the plant of the Worthington Light & Water Company, in Greene county, to dismiss the suit for the foreclosure of the same in the circuit court of that county, and to credit the value of the personal property for which the mechanic's lien was filed upon the claim of the petitioner against the bankrupt corporation. The petition was referred to A. A. Chapin, referee, for investigation and report, and a demurrer to the petition was overruled by him. An answer in denial of the petition, which also charges that the petition seeks a fraudulent preference, and a reply in denial of the special matter of defense, were thereafter filed with the referee, and testimony was taken. His report, in which he finds for the petitioner, and a petition by the trustee for a review of the finding, in the nature of exceptions thereto, have been filed here, and are now submitted for the consideration of the court. It is conceded that the petitioner, at the time of the pretended sale to him, had a valid claim against the bankrupt corporation for an amount larger than the value of the property in controversy. The petitioner was vice president of the bankrupt corporation, and had charge of its sales. He claims that he was also in business for himself, and as president and general manager of the Wayne Engineering & Construction Company, and the Worthington Light & Water Company, and other corporations, and bought from the bankrupt corporation material which was used by him in the construction and equipment of electrical plants in various cities and towns, and which was sold and delivered by him to these corporations. He was an officer and agent of the bankrupt corporation, and in charge of its sales, and he was at the same time an officer and agent of other corporations, and was buying goods from himself, and selling them to himself. It does not appear, from the minutes of the bankrupt corporation or otherwise, that the petitioner was authorized, by its board of directors, to carry on its business in this way. It is hardly presumable that he would be permitted to occupy such a relation of salesman and customer, if he were really engaged in business for himself as a rival and competitor of the bankrupt corporation, while it was represented by himself as its officer and agent in selling its goods. Equity looks through forms, at the substance of things, and it is obvious, from all the evidence in the case, that the petitioner, as agent of the bankrupt corporation, sold its property, as described therein, to the Worthington corporation, and not to himself, as an intermediary or otherwise, and that the sale was made when the goods were delivered, on Janu-

ary 17th. The intervention of himself, as an independent entity, between himself as the agent of the bankrupt corporation, and himself as the agent of the Wayne Engineering & Construction Company, or as the agent of the Worthington corporation, might have been regarded as a sort of harmless fiction, which deceived nobody. It certainly does not change or obscure the facts, and is unworthy of serious consideration by the court. It may have been meant, and generally understood, as a business device or trick of the trade, for increasing the sales of the bankrupt corporation; otherwise, it was a fraud upon the bankrupt corporation and all who dealt with it. In any event, it is contrary to public policy that such an arrangement should be upheld. In this view of the case, it is unnecessary to consider whether there was a sale or contract of sale on September 3d or 5th, within the requirements of the statutes of frauds. As a matter of fact, the property remained in the possession of the bankrupt corporation. It was not marked in any way as the property of the petitioner. A part of it was afterwards sold by the bankrupt corporation to other parties, and there was not any entry of a sale of the property on the books of the bankrupt corporation at that time. If there was a sale at that time to the petitioner, it was not made with the assent of the bankrupt corporation, and it is voidable, at the instance of the trustee, who is the representative of the bankrupt corporation and its creditors. The bankrupt corporation being indebted to the petitioner as stated therein, he might, with the consent of the bankrupt corporation, have received and been credited on its indebtedness to him with the value of the property. But the note or memorandum made on September 3d and 5th and the testimony show an entirely different transaction. They refer exclusively to the sale which was afterwards made to the Worthington corporation, and there was not any entry of such a credit, or any authority for it, on any of the books of the bankrupt corporation, and the subsequent sale of a part of the property to other parties indicates that such a credit was not actually given or intended. The prayer of the petition does not seek to have the claim of the petitioner allowed as a general claim against the estate in bankruptcy, and the petition does not contain the averments which are required by the law and the rules and forms of the supreme court in proof of debts by creditors. It has not, therefore, been considered on its merits, as a general claim.

For the foregoing reasons, the petition by the trustee for a review of the finding and order of the referee is sustained, and said finding and order of the referee are reversed, and the petition of Charles S. Knight is overruled and dismissed, with leave to file his claim and proof of debt as a general creditor of the bankrupt corporation, and, when so filed, it may be submitted upon the evidence which has already been taken, or, if desired, further evidence may be adduced by either party. The restraining order heretofore granted, restraining the prosecution of the suit in the circuit court of Greene county, Ind., is set aside, with leave to the trustee to prosecute said suit, if so advised.

## BLAKEY v. BOONVILLE NAT. BANK et al.

(District Court, D. Indiana. July 8, 1899.)

No. 446.

**BANKRUPTCY—FRAUDULENT TRANSFERS—PAYMENT OF MONEY.**

Under Bankruptcy Act 1898, § 67, cl. e, providing that "all conveyances, transfers, assignments, or incumbrances of his property, or any part thereof, made or given by a person adjudged a bankrupt \* \* \* within four months prior to the filing of the petition, with the intent and purpose on his part to hinder, delay, or defraud his creditors, shall be null and void," the payment of money by a debtor, on a valid pre-existing debt, under circumstances which do not make it technically a preference, is not a "transfer of property," in such sense that the trustee or receiver of the debtor in bankruptcy may recover back such payment from the creditor receiving it, on proof of the fraudulent intention of the debtor.

**In Equity.**

This is a suit in equity by the complainant, as receiver of an estate in bankruptcy, to recover, for the benefit of the estate, certain sums of money paid by the bankrupt to the defendants on promissory notes held by them, respectively, against the bankrupt, which were due and owing when the payments were made. The defendants severally answered, admitting the payment of the money within four months preceding the adjudication of the debtor as a bankrupt, but averring that they did not know or have reason to believe that he was insolvent at the time the payments were made, nor did they have reasonable cause to believe that such payments were made with any intent to give them a preference. The complainant has filed exceptions to these answers on the ground that they do not show that the payments were not made by the bankrupt with the intent on his part to cheat, hinder, or delay his other creditors.

Iglehart & Taylor, for complainant.

Armstrong & Kiper, Edward Gough, Hatfield & Hemenway, Azro Dyer, and Herbert E. Hoggatt, for defendants.

BAKER, District Judge. The sole question raised by the exceptions to the several answers of the defendants is whether money paid by a debtor to his creditor on a valid pre-existing debt, when the creditor at the time he received such payment had no reasonable cause to believe that it was thereby intended to give a preference, may be recovered for the benefit of the bankrupt's estate on the ground that within four months after such payment the debtor was adjudged a bankrupt, and in making such payment the debtor intended to cheat, hinder, and delay his other creditors; or, in other words, whether money paid upon a debt under the circumstances above stated may be recovered by the trustee of the bankrupt, under clause e of section 67 of the bankruptcy act.

The present bankruptcy act contains no express provision prohibiting the payment of money upon a debt under any circumstances. The law of 1867 (Rev. St. § 5128) provides that if any person, being insolvent, makes any payment, the person receiving such payment having reasonable cause to believe such person insolvent, the money so paid may be recovered for the benefit of the bankrupt's estate. Another section of that act (Id. § 5021) provides that any debtor who is insolvent, or in contemplation of insolvency, who shall make any payment with intent to give a preference, shall be deemed to have