

of the contract, it follows that the guaranty therein contained has not been performed or kept good; for the evidence clearly shows that the plant erected by the company will not produce 30 tons of ice per day with a coal consumption of $4\frac{1}{2}$ tons of good steam coal of the grade in general use at Lincoln.

The only relief asked in the answer is that the court will ascertain the amount of damages to which the defendant Cooper may be entitled by reason of the breach of the guaranty, and to set off the same against any amount found due the complainant. There is no evidence introduced on which the court can base a finding as to the difference in value, if any, of the plant as a whole, as it was furnished, and its value had it met the requirements of the guaranty, and, under the evidence, the court is limited to the damages proved to have accrued, up to the present time, to the defendant Cooper, by reason of the greater consumption of coal necessary to produce 30 tons of ice during each 24 hours of continuous running. Giving consideration to all the facts bearing upon this point, an allowance of \$2,500 is probably a fair estimate of the increased consumption of coal due to the failure of the plant to meet the requirements of the guaranty, and this sum, with interest at 6 per cent. from July 1, 1897, will therefore be allowed the defendant, by way of set-off, against the sum due on the two notes which have already matured. The clerk will compute the amount due upon the notes declared on, deducting therefrom the damages allowed, and a decree of foreclosure will be entered as prayed for, each party to pay his own costs.

In re CRENSHAW.

(District Court, S. D. Alabama. July 5, 1899.)

1. BANKRUPTCY—OPPOSITION TO DISCHARGE—FALSE OATH.

Where the bankrupt, more than four months before the commencement of the proceedings, had transferred a stock of goods to his wife, and his schedule in bankruptcy stated that he had no assets of any kind, *et cetera*, that such transfer, although it may have been void as to creditors, was valid as to the bankrupt, and, therefore, in the absence of evidence of intentional wrong on his part, his oath to the schedule was not such a false oath as would forfeit his right to a discharge.

2. SAME—SCHEDULE OF DEBTS.

The bankrupt's omission of a debt from his schedule of creditors will not make his oath to such schedule a false oath, such as to be ground for refusing his discharge, if the omission was caused by mere mistake or inadvertence, or unless it is shown to have been willful and intentional.

In Bankruptcy. On application of the bankrupt for discharge. Prince & Prince and J. W. McAlpine, for opposing creditors.

TOULMIN, District Judge. In this case specifications are filed by several creditors objecting to the discharge of the bankrupt. The specifications are, in substance—First, that the bankrupt willfully made a false oath relating to said proceeding in bankruptcy when he stated on oath that he had no assets of any kind,—the falsity of the oath being in that he had a stock of goods which was his property, and which should have been scheduled by him as an as-

set, which stock of goods he theretofore attempted to transfer to his wife; and, second, that in his schedule of creditors the bankrupt willfully made a false oath when he scheduled the debt due Finlay, Dicks & Co. to be by note of only \$82.34, whereas it should have been by two notes,—one for \$82.14, and one for \$82.58.

The bankrupt law provides that the application for a discharge, and such proofs and pleas as may be made in opposition thereto, shall be heard, and the merits of the application investigated, and the applicant shall be discharged unless he has (1) committed an offense punishable by imprisonment as provided in the law; or (2) with fraudulent intent to conceal his true financial condition, and in contemplation of bankruptcy, destroyed, concealed, or failed to keep books of account or records from which his true condition might be ascertained. And the law provides that a person shall be imprisoned upon conviction, among other offenses, of making a false oath or account in, or in relation to, any proceeding in bankruptcy. The charge here, as we have seen, is that the bankrupt made false oaths in rendering his schedules. The evidence shows that the transfer by the bankrupt to his wife was made four months and one week before the filing of the petition in bankruptcy, and there is no evidence of any special concealment about it. While the transfer may have been fraudulent and void in law, and by proper proceedings may have been so declared, and the property transferred secured and subjected by the creditors, or by a trustee for their benefit, to the payment of the bankrupt's debts, yet this does not constitute his oath to the statement that he had no assets a false oath. So far as he was concerned, the transfer to his wife was valid and binding, and he could not impeach it. The property was hers as respects everybody but creditors. The transfer might be shown to be null and void as to creditors, but by the bankrupt law it is not declared to be so, inasmuch as it was made more than four months before the petition in bankruptcy was filed. The oath must have been false in fact. There must have been an intentional wrong in making it. It must have been willful, and for the purpose of concealment and to mislead and defraud his creditors. In the absence of proof of intentional wrong in making the oath, the bankrupt's failing to schedule and deliver up the property for the benefit of his creditors will not bar his discharge, even though the transfer to his wife may have amounted to constructive fraud and have been void as against creditors. *In re Warne*, 10 Fed. 377; *Id.*, 12 Fed. 431.

The omission from the schedule of one of the notes due Finlay, Dicks & Co. was doubtless an oversight or mistake. From the facts and circumstances, I can see no motive for omitting it and no benefit to be derived by the bankrupt from such omission. His oath to the schedule with this omission, unless it was willfully made, would not, in contemplation of the law, be a false oath. From the evidence and all reasonable presumptions to be drawn therefrom, I must conclude that the omission was unintentional. Under the specifications and evidence, I think the bankrupt is entitled to his discharge, and it is so ordered.

In re MERCUR (two cases).

(District Court, E. D. Pennsylvania. July 24, 1899.)

Nos. 90, 91.

1. **BANKRUPTCY—PETITIONING CREDITORS—CREDITOR OF PARTNERSHIP.**

A creditor of a partnership is also a creditor of each member of the firm; and is entitled, as such, to join in a petition in involuntary bankruptcy, brought against one of the partners individually.

2. **SAME—PETITION—AMENDMENT.**

Where, at the hearing on a petition in involuntary bankruptcy, it is proved that the debtor, within the statutory time, has made an assignment for the benefit of creditors, this act of bankruptcy, although not originally alleged in the petition as ground for an adjudication, may be added to the petition by amendment.

In Bankruptcy. Separate petitions in involuntary bankruptcy were filed against Ulysses Mercur and James Watts Mercur, as individuals, and without reference to the fact that they were also partners under the firm name of J. W. Mercur & Co. Petitions having been filed by certain creditors of the partnership asking for leave to join in the petitions against the individual partners, the cases came up for hearing on these applications and on the question of adjudication in bankruptcy.

M. Hampton Todd, Albert E. Peterson, and Edwin H. Hall, for petitioning creditors.

John G. Johnson, for the bankrupts.

McPHERSON, District Judge. In each of these cases only one creditor petitioned, the allegation being that the creditors of the bankrupt were less than 12 in number. The answer in each case denied the allegation, averring that the number of creditors exceeded 12, and appending a list containing the names and addresses of more than 12 such persons. Shortly afterwards, the Vulcanite Paving Company and the P. H. Fairlamb Company filed separate petitions, averring that they were creditors of the firm of J. W. Mercur & Co., consisting of James Watts Mercur and Ulysses Mercur, and asking to be permitted to join in the original petitions. This request is resisted by the bankrupts on the ground that the applicants are partnership creditors, and therefore cannot be counted among the individual creditors of each partner. I am unable to sustain this objection. The creditors of a partnership are also creditors of each individual member, and have a right to petition against him, as well as against the firm. This has been several times decided, and is supported by principle no less than by authority. How far the partnership creditors may be entitled to share in the distribution of the separate property of each member is a distinct question, which can only be determined hereafter when the assets come to be marshaled.

That both bankrupts are insolvent, and that both committed an act of bankruptcy within four months preceding the filing of the petitions, cannot be successfully disputed. It was proved at the hearing that on December 20, 1898, they executed a deed of volun-