

Eng. Rep.]

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ENGLISH REPORTS.

CHANCERY.

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Settled account—Bill for account—Composition deed—Jurisdiction—Fraud.

A debtor executed a composition deed under the Bankruptcy Act 1861, whereby he covenanted to pay his creditors a composition of 8s. in the pound. The deed was duly registered and assented to by the required majority of creditors. Subsequently a person who had acted as the debtor's agent in certain business transactions claimed to be his creditor for £300, and his name was entered as a creditor for that amount in the schedule to the deed, and he received the composition on it.

The debtor, having afterwards discovered several fraudulent overcharges in his agent's account, filed a bill for an account:

Held, that he was entitled to a decree for an account notwithstanding the composition deed.

[24 L. T. Rep. N. S. 927.]

This was a suit instituted for the purpose of obtaining from the defendant an account of shipments of hops, and of moneys paid and received in respect thereof by the defendant as agent for the plaintiff, who was a hop merchant.

In July, 1867, prior to which date the shipments in question had taken place, the plaintiff, having fallen into pecuniary difficulties, called a meeting of his creditors and agreed to pay them a composition of 8s. in the pound.

A composition deed, dated the 24th July, 1867, was accordingly executed: it was assented to by the requisite majority of the creditors, and registered under the Bankruptcy Act 1861, but it did not contain an assignment of property.

The defendant was not present at the meeting of the creditors, but he afterwards asserted that he had a claim against the plaintiff, on the shipments in question, for £300; and the plaintiff accordingly entered him as a creditor for that amount in the schedule to the deed, and paid him the composition on it.

Having subsequently discovered that there were many inaccuracies and overcharges in the account furnished by the defendant, the plaintiff filed his bill for an account.

The facts of the case will be found more fully stated in his lordship's judgment, which was in writing.

Jessel, Q. C., and *W. F. Robinson*, for the plaintiff, submitted that as the account contained fraudulent overcharges, the plaintiff was entitled to have it opened.

Swanston, Q. C., *H. M. Jackson*, and the Hon. *E. Romilly*, for the defendant.—This is not a case in which the Court of Chancery will grant relief, as the plaintiff has executed a composition deed. His relief, if he have any, must be obtained in the Court of Bankruptcy. It may be urged that the Court of Chancery has concurrent jurisdiction in these cases, but it is quite settled that it does not interfere in such cases except when the Court of Bankruptcy cannot give adequate relief: *Stone v. Thomas*, 22 L. T. Rep. N. S. 359, L. Rep. 5 Ch. 219; *Phillips v. Furber*, 22 L. T. Rep. N. S. 288, 707; L. Rep. 5 Ch. 746. But the Court of Bankruptcy has ample power to give relief under the 197th section of the Bankruptcy Act 1861. And the fact that the composition deed in this instance does not

contain any assignment of property makes no difference, for in *Re Marks' Trust Deed* (15 L. T. Rep. N. S. 139; L. Rep. 1 Ch. 429), it was held that the 197th section of the Bankruptcy Act 1861, giving the court power under a registered deed to make the same orders as if the debtor was bankrupt, is not confined to deeds assigning property of the debtor. Again, to obtain a decree in this suit for an account, the plaintiff must offer to pay the defendant the whole amount which may be found due to him; the account may turn out in favour of the defendant, and it would not be fair to the plaintiff's other creditors that the defendant should be paid in full. Nor would it be just if the accounts should turn out in favour of the plaintiff, to allow him to recover the amount found due to him from the defendant for his own purposes. The other creditors would not have accepted such a small composition had they known that the defendant was a debtor and not a creditor of the plaintiff. For all these reasons this is a case for the Court of Bankruptcy, which can have all the creditors before it, and has jurisdiction to deal with the application of any sum which may be found due from the defendant to the plaintiff. They also referred to *Martin v. Powning*, 20 L. T. Rep. N. S. 133, L. Rep. 4 Ch. 356; *Lancaster v. Elce*, 7 L. T. Rep. N. S. 123, 31 L. J. Ch. 789; and *Willis v. Jernegan*, 2 Atk. 251.

Jessel, Q. C., in reply.—The other creditors of the plaintiff have no concern in this question. They agreed to accept a composition of 8s. in the pound without knowing anything about the defendant's claim against the plaintiff, and it was not till after the execution of the composition deed that the defendant made his claim, and was entered as a creditor in the schedule. The arrangement made between the defendant and the plaintiff was a distinct and separate one, and the other creditors have no interest in the matter. The fraudulent overcharges contained in the defendant's account entitled the plaintiff to have it re-opened, and this can be done without setting aside the composition deed. This is clearly a case for relief in equity: the Court of Bankruptcy cannot grant the relief sought; for it cannot compel the creditor of a bankrupt to pay anything; it can only expunge his claim.

In answer to a suggestion made by Lord ROMILLY,

Jessel said that the plaintiff was not prepared to give an undertaking to divide amongst his creditors any sum which he might recover in this suit.

May 22.—LORD ROMILLY.—This is a suit instituted to obtain an account of shipments of hops and moneys paid and received by the defendant in respect thereof, on behalf of the plaintiff. The facts are peculiar. In and prior to 1863, and from that time down to the month of July, 1867, the plaintiff carried on business as a hop merchant at Oxford and also at Southwark. He bought large quantities of hops on speculation and consigned them to various places and persons abroad, and for that purpose he employed the defendant, who was and is a commission merchant, carrying on business in London, to act as his agent at a commission of 2½ per cent., besides regular expenses and charges. In 1867