AMERICAN SOUTHERN TRUST COMPANY *v.* VESTER.

Opinion delivered January 26, 1931.

1. BANKRUPTCY—LISTING OF CREDITORS.—The statute 11 USCA, § 35 (3) requiring listing of names of creditors in a bankrupt's schedule of probable debts *held* sufficiently complied with as to a note where the bankrupt designated the name and address of the payee and of the attorney who held the note for collection.
2. NOTICE—SUFFICIENCY.—Notice of bankruptcy of the maker of a note to an attorney holding the note for collection is notice to the owner of the note within Bankruptcy Act, § 17 (3), 11 USCA, § 35 (3).

Appeal from Clay Circuit Court, Western District; *W. W. Bandy,* Judge; affirmed.

STATEMENT BY THE COURT

The only question for determination on this appeal is whether a discharge in bankruptcy released the appellee from payment of the claim of appellant, it being alleged that appellant's debt was not scheduled by the bankrupt.

The record discloses that J. H. Vester of Success, Arkansas, executed his negotiable promissory note for $610.80, on March 10, 1927, to the Bank of Success, at Success, Arkansas, payable four months after date. Before maturity the note was sold and transferred to the American Southern Trust Company, at Little Rock, Arkansas. About January 1, 1928, the Bank of Success became insolvent, and its assets were turned over to the State Banking Department for liquidation. In the latter part of 1928 the appellant company demanded payment of the note of appellee, and, not being paid, notified appellee that the note had been turned over for suit and collection to its attorney, E. L. Holloway, of Corning, Arkansas. After receiving the note Holloway notified appellee demanding payment and indicating suit would be brought to enforce it. Appellee called on the attorney and talked with him about the payment of the note. On June 17, 1929, appellee filed his petition in bankruptcy in the United States District Court for the Eastern District of Arkansas, Jonesboro Division, and was granted a discharge on the 21st day of September, 1929. The debt was listed in the bankruptcy schedule as follows: "Bank of Success, Success, Arkansas, assigned to Southern Bank & Trust Company (note), Little Rock, Arkansas (in the hands of E. L. Holloway, Corning, Arkansas, for collection), $610." The required notice to creditors was mailed by the clerk or referee to the creditors as listed by the petitioner in bankruptcy.

In this suit for collection of the note appellee pleaded his discharge in bankruptcy in bar of appellant's claim. Appellant replied, denying the allegations of the answer

and that the discharge in bankruptcy released appellee from the payment of its claim, same not being duly scheduled in the list of creditors, and denied that it had actual knowledge or notice of the proceedings in bankruptcy. The cause was submitted to the court without a jury.

Appellee admitted having received the letter from E. L. Holloway, of Corning, Arkansas, dated December 26, notifying him that the note made to the Bank of Success was the property of the American Southern Bank & Trust Company, at Little Rock, which had been forwarded to him to bring suit on. The discharge was introduced in evidence, and it was agreed that notice had been mailed to the creditors as they were listed in the schedule.

W. Pierce testified that he knew about the bankruptcy proceedings, and had talked with Mr. Holloway after the petition was filed a week or ten days, and when Holloway asked if Vester had gone into bankruptcy, "I told him I reckon he had, for he told me he was going to."

Another witness testified that he was present when the list was made out, and heard Mr. Vester tell the clerk about the note given to the Bank of Success having been transferred to the Little Rock bank, the name of which he thought was the Southern Bank & Trust Company, as the clerk listed it.

Holloway testified, denying the conversation of the witness about the bankruptcy proceedings; stated that he was not the attorney for the American Southern Trust Company, was not assuming to represent it generally or to represent them in the bankruptcy court, but was merely an attorney in this suit and in the State court. A nonsuit was taken when plaintiff discovered the defendant had gone into bankruptcy and received his discharge.

The court found the claim of the plaintiff was scheduled as required by law in the bankruptcy proceedings, and the discharge was a complete bar or release of appellee from any liability to the payment of the claim

on the note, and from the judgment the appeal is prosecuted.

E. L. Holloway, for appellant.

F. G. Taylor and *C. T. Bloodworth,* for appellee.

KIRBY, J., (after stating the facts). The testimony shows that appellant was the owner of the note at the time of the filing of the petition in bankruptcy which was listed as already set out. The Bankruptcy Act provides: (§ 17, 1 Collier on Bankruptcy, 13 Ed., p. 591; and 11 U. S. C. A., § 351: "A discharge in bankruptcy shall release the bankrupt from all his provable debts, except such as * * * (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor, if known to the bankrupt, unless such creditor had actual knowledge or notice of the proceedings in bankruptcy." In *Steele* v. *Thalheimer,* 74 Ark. 516, 86 S. W. 305, this court held a discharge valid where the correct name of the creditor was given in the schedule, although his post-office was incorrectly given as Little Rock, when he in fact lived at Clinton and had received no notice of the bankruptcy proceedings on that account. Appellant claims he comes within the exception No. 3 in § 17 of the Bankruptcy Act providing the discharge shall not release the bankrupt from provable debts, except such as "(3) have not been duly scheduled in time for proof and allowance, with the name of the creditor, if known to the bankrupt, unless such creditor had actual knowledge or notice of the proceedings in bankruptcy." Although the appellant company, the American Southern Trust Company, was not named as a creditor in the schedule, which did show correctly the name and address of the bank to which the note was given, that it had been transferred to the Southern Bank & Trust Co., Little Rock, Arkansas, and was then in the hands of E. L. Holloway, of Corning, Arkansas, for collection, notice was sent to all parties as listed. This was a sufficient compliance with the statute requiring the name of the creditor to be duly scheduled if known to the bankrupt, its purpose being that notice should be given to him of the bankruptcy pro-

ceedings. The debt was described as having been given the Bank of Success, "assigned to Southern Bank & Trust Company (note), Little Rock, Arkansas, (in the hands of E. L. Holloway, Corning, Arkansas, for collection) $610." Notice was given to all these parties and to appellant's attorney, who had the authority to collect the note, and had already demanded payment. This notice was given to the attorney and, the knowledge acquired while acting for the principal, the creditor, relating to a matter within the scope of his agency, and the agent is presumed to have communicated it to his principal, as it was his duty to do. The discharge would have been valid and effective to release the bankrupt from the payment of this note, had he scheduled it as "unknown." The name of the creditor, although incorrectly given, could easily have been ascertained from the whole description given, and the notice to appellant's attorney, having the note in his possession for collection, of the bankruptcy proceedings, whose duty it was to communicate it to his principal, was notice to his principal as effectually as though it had come directly to it. There is no allegation or intimation that the failure to give the name of the creditor correctly was intentional or fraudulent.

A careful consideration of the whole case discloses that the court did not err in holding that the discharge in bankruptcy was effectual to release appellee from the payment of the debt as scheduled, and the judgment is therefore affirmed.