

Case No. 42.

IN RE ADAMS.

[6 Ben. 56.]¹

District Court, S. D. New York.

April, 1872.

EXAMINATION OF WITNESS—FORM OF OATH.

An attorney, who is called as a witness in a proceeding in bankruptcy, is not entitled to add to the oath which he takes a reservation of a right to refuse to answer any question on the ground of privilege as the attorney or counsel of the bankrupt.

[See note at end of case.]

In bankruptcy. On the application of the assignee in bankruptcy in this case, a summons was issued to an attorney to appear as a witness. He appeared before the register on the 16th of March, 1872, and was sworn in these words: "I do solemnly swear that I will make true answer to all such questions as may be proposed to me respecting all the property of the said James M. Adams, the bankrupt above named, and all dealings and transactions relating thereto, and will make a full disclosure of all that has been done with the said property, to the best of my knowledge, information and belief; and that I will make true answers to all questions which may be put to me relating to the disposal or condition of the said property of the said bankrupt, to his trade and dealings with others, and his accounts concerning the same, to all debts due to or claimed from him, and to all other matters concerning his property and estate, and the due settlement thereof according to law, reserving my right to refuse to answer any question in regard to such matters on the ground of privilege as the attorney and counsel of said Adams, which I may not be able to answer except in consequence of my retainer as such attorney and counsel, and from information derived from my client as such." The examination was adjourned till the 18th of March, when the witness appeared. The assignee refused to proceed with the examination of the witness under the oath which he had taken. The witness then proposed to take an oath in the following form: "I, being duly sworn in regard to the matters now pending before the said register, say, &c." To this the assignee objected. The register certified the question to the court.

BLATCHFORD, District Judge. The proper form of oath is the first, without the reservation added to it. The assignee was right in declining to proceed with the examination of the witness under the oath administered March 16th, 1872, and in objecting to the witness being sworn in the form proposed by the witness.

[NOTE. The attorney of a bankrupt cannot refuse to be sworn, on the ground of privilege, nor can he object till some question is asked which invades such privilege. In re Woodward, Case No. 17,999. For instances in which certain questions were held to be proper, see In re Aspinwall, Id. 591.

In re ADAMS.

¹ [Reported by Robert D. Benedict, Esq., and here reprinted by permission.]