

Case No. 260.  
[9 Ben. 17.]<sup>2</sup>

IN RE ALSBERG ET AL.

District Court, S. D. New York.

Jan. 1877.

VOLUNTARY BANKRUPTCY—ADJUDICATION—COMPOSITION.

Where a petition in voluntary bankruptcy was filed, and the debtor thereafter, before an adjudication, began proceedings for a composition under the Act of June 22d, 1874, an adjudication ought not to be made merely because certain creditors ask for it, if the debtor does not ask for it.

In bankruptcy. Albert Alsberg and Joseph Jordan had filed a peon in voluntary bankruptcy. Before an adjudication of bankruptcy was made, they commenced proceedings for a composition under the act of June 22d, 1874, [18 Stat. 178, c. 390; repealed June 7, 1874, 20 State. 99.] Certain creditors applied to the register to make such adjudication. The debtors opposed it. The register decided that he had the right to make such adjudication and that it was his duty to do so, if the proof before him was sufficient. Before he did so, the question was certified to the court.

W. B. Hornblower, for creditors.

A. Blumenstiel, for debtors.

BLATCHFORD, District Judge. While there is no want of power, perhaps, to make the adjudication, I do not think it ought to be made unless the debtors ask to have it made, this being a voluntary case, if proceedings for a composition have been commenced by the debtors, under the act of 1874.

<sup>2</sup> [Reported by Robert D. Benedict, Esq., and Benj. Lincoln Benedict, Esq., and here reprinted, by permission.]