

Case No. 464.

ANONYMOUS.

[3 N. Y. Leg. Obs. (1845,) 155.]

District Court, N. D. New York.

BANKRUPTCY—DISCHARGE AND CERTIFICATE—JURY TRIAL—RIGHT TO BEGIN.

On trial by jury to determine the right of a bankrupt to a discharge and certificate, the opposing creditor has the affirmative of the issue, and has consequently the right to begin.

At the close of an argument, on a motion for a new trial by jury to determine the right of a bankrupt to a discharge, Mr. Myers stated to the court, that considerable doubt and some diversity of opinion and practice prevailed among the commissioners before whom trials of this nature had from time to time been ordered, upon the question, whether it was the right of the objecting creditor, or of the bankrupt, to begin; and he suggested that, as there were yet many trials to be had, an expression of the opinion of the court on this point, would be useful in relieving the commissioners from embarrassment, and in producing uniformity in the practice.

CONKLING, District Judge, said he had never entertained any doubt on the point, but had uniformly been of opinion that the opposing creditor was to be considered as holding the affirmative of the issue, and ought to begin. The granting of a discharge was a matter of course, unless objections were affirmatively interposed and affirmatively sustained by evidence. In such a proceeding, the objector was the actor, and the bankrupt stood on the defensive.