

IN RE ASH.

Case No. 571.  
[17 N. B. R. 19.]

District Court, S. D. New York.

Jan. 7, 1878.

BANKRUPTCY.—COMPOSITION—EXAMINATION OF BANKRUPT.

[A bankrupt may be compelled to present himself and produce his books before the register for examination on the question whether a composition entered into in his case is for the best interest of all concerned.]

In bankruptcy.

Chamberlain, Carter & Eaton, for opposing creditor.

Richard S. Newcombe, for alleged bankrupt

I, James F. Dwight, one of the registers of the said court in bankruptcy, do hereby certify, that in the course of proceedings in said cause before me, and at the second meeting in composition held before me on the 3d day of January, 1878, pursuant to an order Of this court dated the 24th day of December, 1877, the following questions arose pertinent to the said proceedings, and were stated and agreed by the counsel for the opposing parties, to wit: Mr. Richard S. Newcombe, who appeared for the alleged bankrupt, and Messrs. Chamberlain, Carter & Eaton, who appeared for Strauss, Kupfer & Co., one of the creditors of said alleged bankrupt, opposing the composition.

Mr. Eaton of counsel for said creditor made the following motion: First.—That he may be allowed to examine the alleged bankrupt touching the question of “best interest of the creditors.” Second.—That the register direct the alleged bankrupt to produce his books and papers to be used upon such examination; and Third.—That he be allowed to examine the said alleged bankrupt and the said books at once. Mr. Eaton, in support of said motion, said that he expected to show that the proposed composition was not for the best interest of the creditors,” by showing, first, that the alleged bankrupt had cancelled assets which did not appear in his statement; and, second, that several of the claims upon which proofs of debt have been made and which have been counted in favor of the composition are fictitious; and third, that if such claims are fictitious the resolution in said composition had not been properly adopted and confirmed. Mr. Eaton stated that one of his clients, to wit. Mr. Kupfer, a member of the firm of Strauss, Kupfer & Co., the opposing creditors, was present and would make affidavit to these charges if desired.

Mr. Newcombe, the attorney for [Michael Ash] the alleged bankrupt, opposed such motion upon the following grounds: First, that the time for such examination by the creditors had elapsed; second, that such examination can only be had at or during the first meeting; third, that this is the second meeting in composition, and is held for the limited purpose stated in the order of reference, and that such purpose does not require or demand the examination of the alleged bankrupt by a creditor. That no excuse is offered by

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the opposing creditors for not moving for the examination of the alleged bankrupt at the first meeting of creditors. The alleged bankrupt was present in person at a portion of the second meeting, but did not answer when called for examination, and Strauss, Kupfer & Co., the opposing creditors, were not present at the beginning of the first meeting, but their claim was proved during the first meeting.

I decided that Mr. Eaton had made out a prima facie case for such examination, and granted the motion, holding that the opposing creditor should be allowed to examine the alleged bankrupt touching the question of best interest of the creditors, and that the alleged

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bankrupt should attend and should produce his books and papers for the purpose of such examination. To this ruling the attorney for the alleged bankrupt excepted, on grounds identical with those given in connection with his opposition to the motion, and requested that my ruling should be certified to the judge for his opinion thereon. Mr. Eaton desired me to certify that he wishes to be heard by the court upon the exception thus taken; Mr. Newcombe expressed no desire to be heard unless Mr. Eaton's request to be heard is granted.

James F. Dwight,  
Register in Bankruptcy.

In my opinion, inasmuch as I am directed by the order of reference to inquire, and upon hearing to report the results of my inquiries whether it is for the best interests of all concerned that the composition should be confirmed, etc., it is my duty to take all the information I can upon the subject, and if a contesting creditor desires to examine the debtor and his books, to develop facts showing that it would not be for the best interests of all concerned, the debtor must present himself for such examination.

James F. Dwight, Register.

BLATCHFORD, District Judge. I concur in the ruling of the register.