

Case No. 1,637.

{3 McLean, 317.}<sup>1</sup>

IN RE BOOK.

Circuit Court, D. Ohio.

Dec. Term, 1843.

BANKRUPTCY—PRACTICE—PETITION BY INFANT—HOW BROUGHT—EFFECT OF JUDGMENT—RELIEF FROM TORT—DISCHARGE—“PERSONS IN INTEREST.”

1. A formal plea in bankruptcy is not necessary nor usual, and, if filed, will be treated as a motion.
2. An infant is entitled to the benefit of the bankrupt act
3. The proceedings may be had in his own name.
4. The bankrupt law relieves against a judgment for a tort.

{See In re Comstock, Case No. 3,073.}

5. Any one interested in the administration of the effects of the bankrupt may object, though technically he is not a creditor.

{Cited in Re Sheppard, Case No. 12,753; Re Derby, Id. 3,815.}

{On certificate from the district court of the United States for the district of Ohio.

{In the matter of Samuel Book. Answers-certified.}

Shannon & Carroll, for bankrupt.

OPINION OF THE COURT. The following points have been certified to this court from the district court, under the bankrupt law.

1. “Whether a plea in abatement is a regular and authorised form of opposition to a petition in bankruptcy, and whether the motion filed in the above case to strike out such plea ought to prevail.” Formal pleading in such a case is not usual or necessary; but there is no reason why the objection should not be so stated. The form of the objection may be governed by the discretion

of the party making it. The plea should be treated merely as written objections.

2. "Whether the infancy of the applicant is good grounds of opposition to his discharge as a bankrupt" An infant is bound to pay certain debts. The bankrupt law extends its benefits to all persons who are in a state of bankruptcy, without exception as to persons; fiduciary debtors only are excepted. An infant, therefore, may claim the benefit of the bankrupt law. When an infant brings his case within the bankrupt law, the law vests his property in the assignee.

3. "Whether the fact of the applicant's being a minor, petitions in his own behalf and in his own name, and not by his next friend, is a good ground of opposition to his discharge as a bankrupt?" If an infant be a proper subject of the bankrupt law, it would seem to follow that he may make application in his own name.

4. "Whether a judgment in a court of law obtained in an action of tort, is a debt dischargeable under and by force of the bankrupt law?" As the law makes no exception as to debts, except those of a fiduciary character, the discharge is from all other debts.

5. "Whether a creditor who has not proved his debt, and is not otherwise interested as a creditor in the proceedings in bankruptcy, can appear and contest the right of the applicant to his discharge?" By the 4th section of the bankrupt law, "notice to all creditors who have proved their debts, and other persons in interest, to appear to show cause why such discharge and certificate shall not be granted," is required.

In Re King, S. D. N. Y. [Case No. 7,784], it was held, "that the terms, 'other persons in interest,' used in the 4th section, are employed to designate those who could not prove debts as creditors, and does not embrace, but excludes creditors." That these words may embrace those who are not properly creditors, but have an interest in the matter, may be admitted; but that they exclude creditors who have not proved their debts, is a gratuitous assumption not warranted by law. In 5 Law Rep. 263 [In re Tebbetts, Case No. 13,817], Justice Story says, in reference to this clause, "if the objectors in that case are not strictly creditors of the bankrupt, they are at least equitably creditors, and have an interest in the property to be administered in bankruptcy."

The above answers may be certified to the district court.

<sup>1</sup> [Reported by Hon. John McLean, Circuit Justice.]