Case No. 1,818.

In re BRAY.

[2 N. 15. R.(1868) 139 (Quarto, 53); 1 Chi. Leg. News, 30.][1]

District Court, D. Kentucky.

BANKRUPTCY—REGISTER—WHAT QUESTIONS MAY BE CERTIFIED.

It is not proper to certify to the judge points or questions that do not properly arise in the course of the proceedings before the register, as the opinion of the judge cannot be asked in that way.

[Cited in Re Haskell, Case No. 6,191.]

[In bankruptcy. The following questions were certified by the register:]

"Is a judgment in favor of the United States against the bankrupt for a fine, in default of the payment of which he is now confined in jail, a debt from which 'a discharge in bankruptcy would release him,' and is the said bankrupt now entitled to be released from imprisonment, during the pendency of proceedings in bankruptcy, upon his petition?"

The attorney of the bankrupt, J. R. Thomas, insists that a judgment for a fine is simply a judgment debt which can be collected only on execution in the common form of law, and, therefore, that it is such a debt as the bankrupt will be discharged from paying when he secures his final discharge in bankruptcy; and, therefore, that he is now entitled to be released from imprisonment. He relies on the thirty-fourth and thirty-fifth sections of the bankrupt act [Act 1867; 14 Stat. 533, 534], and on the second section of the act entitled "An act concerning pardons and remissions of penalties," approved February 20, 1863 [12 Stat. 657].

The opinion of the register is adverse to bankrupt.

BALLARD, District Judge, said, "I am of opinion that the questions certified are not 'points or questions arising in the course of the proceedings,' before the register or upon the result of such proceedings, and that, therefore, the opinion of the district judge Upon them cannot be asked in this way. I decline to express an opinion on either of the questions certified."

[1] [Reprinted from 2 N. B. R. 139 (Quarto, 53), by permission. Syllabus, only, given in 1 Chi. Leg. News, 30.]