IN RE CERF.

Case No. 2,556.

{11 N. B. R. 143;[1] 7 Chi. Leg. News (1874) 79.}

District Court, E. D. Texas.

DISCHARGE IN BANKRUPTCY.

A voluntary bankrupt whose assets are not equal to thirty per cent, of the claims proved against his estate, upon which he was liable as principal debtor, and who has not obtained the consent of one-fourth of his creditors in number and one-third in value, is not entitled to his discharge under the bankrupt act, as amended June 22, 1874 {18 Stat. 180}.

{In bankruptcy. In the matter of Louis Cerf.}

MORRILL, District Judge. I have been requested to reconsider the decision heretofore made in this case, and accordingly have given it as much consideration as is consistent with other duties. The attorneys for the appellant admit that both the proceedings in bankruptcy and the debts of the bankrupt were subsequent to the 1st day of January, 1869, and previous to the 1st day of December, 1873, but insist that the clause in section 33 of the bankrupt act providing "that no discharge shall be granted to a debtor whose assets shall not be equal to fifty per cent, of the claims proved against his estate, unless the assent in writing of a majority in number and value of his creditors to whom he shall have become liable as a principal debtor, and who shall have proven their claims, be filed in the case, at or before the time of the hearing of the application for discharge," is repealed by the act of June 22, 1874, and that consequently the bankrupt is entitled to a discharge, without any regard to the amount of the assets.

The repealing clause relied upon is contained in the two last lines of the section 9 of the act, which is, "The provision in section 33 of said act of March 2, 1867 {14 Stat 533}, requiring fifty per cent, of such assets, is hereby repealed." We will take from the section what was expressly "hereby repealed," and the section would then read, "no discharge shall be granted to a debtor, * * * unless the consent in writing of a majority in number and value of his creditors, to whom he shall have become liable as principal debtor, and who shall have

proved their claims, he filed in the ease, at or before the time of the hearing of the application for discharge." This would virtually limit and confine the bankrupt to the performance of one thing for a discharge instead of allowing the option of one of two things, as before. And, of course, the bankrupt could not be discharged unless he should obtain the required number of creditors, even if he had paid the fifty per cent, of his debts, or a larger amount But this construction of the section 9 would be so obviously erroneous that it does not require a moment's consideration. It is evident that the repealing clause did not receive any more attention than is usually given to those passed at the close of the session in great haste.

The congress, in the passage of the section 9, intended to draw a distinction between a voluntary and an involuntary bankrupt. They further intended to make the conditions of obtaining a discharge of a voluntary bankrupt less onerous than they had previously been, and attach no conditions whatever, except as provided in the general act, and particularly section 29, to the discharge of an involuntary bankrupt As it was in the power of congress to repeal any part or the whole of this bankrupt act, or so to change it as to make the conditions of obtaining a discharge of indebtedness more or less onerous, both as to future cases as well as to cases pending in the courts, and as section 9 of the act of June 22 was inconsistent with the section 33, and pro tanto a repeal thereof, the cause of the repealing clause in the last lines is not obvious. It is possible that it was thought by some that the judiciary might construe the amended act as applying only to causes thereafter to be instituted, and from abundant caution added the repealing clause.

I see no cause to change the opinion heretofore rendered, that inasmuch as the applicant is a voluntary bankrupt, and has not assets equal to thirty per cent, of the claims proved against his estate, upon which he was liable as principal debtor, and has not obtained the consent of one-fourth of his creditors in number and one-third in value—his application for a discharge is refused.

[1] {Reprinted from 11 N. B. B. 143, by permission.}