

Case No. 2,812.

IN RE CLARK ET AL.

{36 Leg. Int. 414;<sup>1</sup> 19 N. B. R. 301.}

District Court, D. New Jersey.

Sept., 1879.

OPPOSING BANKRUPT'S DISCHARGE.

In order to defeat a discharge on any of the grounds set forth in section 5110, Rev. St. U. S. (Bankrupt Law), the creditors must take the initiative. The court will not become the actor when interested parties are quiet.

{In the matter of James S. and John N. Clark, bankrupts.}

NIXON, District Judge. This is an application for a discharge by two partners, the firm having been adjudicated bankrupt. The register has made a special report in the case. He says that the bankrupts have conformed to all the modal requirements of the law, and that he recommends their discharge, unless the court will take notice of their violation of the fifth clause of section 5110 of the bankrupt act, without any appearance of opposing creditors or specification against their discharge. No creditor has formally resisted their application for a discharge; but an extended examination of the bankrupts before the register, pending the proceedings in bankruptcy, shows quite conclusively that the applicants had given fraudulent preferences, contrary to the provisions of the law, by the payment to a number of their creditors, in full, when they were hopelessly insolvent, and knew that they were so.

It has been held, and I think, properly, that in order to defeat a discharge on any of the grounds set forth in section 5110, the creditors must take the initiative. In re Schuyler [Case No. 12,494]; In re Rosenfeld [Id. 12,057]. If they do not enter an appearance and file specifications they are not regarded as opposing the discharge, but, on the contrary, as assenting to it. The court cannot be expected to become the actor, when interested parties are quiet, except in those cases where there is a question whether the modal requirements of the law have been complied with. The discharge will be granted.

In re CLARK et al.

CLARK, IN RE. See Cases Nos. 2,842-2,844.

<sup>1</sup> [Reprinted from 36 Leg. Int. 414, by permission.]