

Case No. 3,322.

IN RE CRAIG.

[3 N. B. R. 100 (Quarto, 26); 3 Ben. 353.]<sup>1</sup>

District Court, S. D. New York.

Aug. Term, 1869.

EXAMINATION OF BANKRUPT.

Where counsel of creditor put questions to bankrupt upon his examination, touching property of his wife, and his own acts in relation thereto, bankrupt objected that the questions related to matters existing and transpiring prior to the time when the creditor's debt was contracted, and declined to answer unless compelled. *Held*, that the questions were proper, and bankrupt should answer.

[On certificate of register in bankruptcy.

[In the matter of Daniel H. Craig.]

I, Odle Close, one of the registers of said court in bankruptcy, do hereby certify, that in the course of the proceedings in said cause before me, the following questions arose, and were stated and agreed to by the counsel for the opposing parties, to wit: The following is a summary of the evidence upon the point to be submitted to the court:

"Q. Was Hiram Hyde ever connected with you in business in any way. A. Yes. Q. In what way? A. I loaned him money. Q. How much money? A. I do not know; that was before your time; it was before 1856; and under the advice of Mr. Field I decline to answer such questions until somebody compels me to do it. That question goes back to somewhere in the neighborhood of 1849. (Counsel for bankrupt states that he objects to any question going back of 1856, and directs the witness not to answer such questions until they shall have been certified to the court.) Witness.—I decline to answer any question relating to matters previous to 1856, until the decision of the court is obtained. Q. Did your wife have any property when you married her? A. I suppose she had some. Q. How much? (Mr. Ensign objects to the question, and witness declines to answer, for reasons before given.) Q. Do you recollect, approximately, how much she had? A. I decline to answer, subject to the decision of the court Q. Was any property settled on your wife, at the time of your marriage, by marriage settlement? (Same objection.) Q. Has your wife derived any property since her marriage and prior to 1856, either from you or from any other person, to your knowledge? (Same objection.) Q. If so, state what amounts, from whom, and what property? (Same objection.) Mr. Ensign.—The witness declines, by the advice of his counsel, to answer any question in regard to any transaction in respect either to his own or his wife's property prior to 1856, the date when Mr. Vail's debt was contracted, subject to the decision of the court Mr. Olmstead.—The counsel for Mr. Vail, the judgment debtor, proposes to ask such questions for the purpose of showing that all or most of the property which is now held in the name of Mrs. Craig, the wife of the bankrupt, was derived from her husband, the bankrupt, without any consideration from her, such questions to be certified by the register to the court Q. How much property is your

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wife worth, to the best of your knowledge? (Objected to.) Q. Did your wife ever derive any of her property from you? (Objected to as going back of 1856, and witness declines to answer.) Q. Did you, on or about May 10, 1858, make any agreement with the American Telegraph Company, whereby you, together with your wife, assigned and transferred to the said company the interest of yourself and wife in certain agreements made

between the Commercial Telegraph Company and John McKinney, Charles Spear, and Wilson G. Hemp, or other parties, or any interest in the said agreements? Look at this paper and see if it is a copy of the paper. (Handing witness paper.) A. I should suppose that was the agreement I have in my mind. Q. Did your wife sign that? A. I suppose she did; that is the paper I have referred to. Mr. Olmstead offers the paper in evidence. Mr. Ensign objects on the ground that the paper is a copy, and no proof has been made that the original is lost. Q. Do you or not know whether any money was paid by the American Telegraph Company, or whether there was any other consideration moving from them for the assignment to them by yourself and wife of May 10, 1858? Mr. Ensign.—I object to any questions with reference to the substance of the papers offered in evidence, on the ground that the originals must be produced. Q. Was any money paid or was there any consideration moving from the American Telegraph Company to yourself and wife on any assignment of any interest to them? (Same objection.) (Answer taken, subject to objection.) Q. What were the matters in which it was supposed you had an interest, and by reason of which you were called upon to execute the assignment to which you have referred? (Objected to that it refers to transactions prior to 1856.) (Answer taken, subject to objection.) Q. Did you make any arrangement with the Telegraph Companies by which you were enabled to have the dispatches sent to you immediately following the dispatches sent to the Associated Press? (Objected to.)”

I am of opinion that the several questions objected to by the petitioner were pertinent and proper, except the question as to whether the petitioner and wife transferred to the American Telegraph Company their interest in certain agreements made between the Commercial Telegraph Company and John McKinney and others, which question is objectionable in so far as it calls for the contents of any such agreement. I am of opinion that the copy paper offered in evidence, purporting to be an assignment to the American Telegraph Company, is not admissible in evidence, on the ground that the same was a copy, as no proof was made that the original was lost, or, if not lost, no notice was given to produce the same.

BLATCHFORD, District Judge. I concur with the register in his views above stated.

NOTE [from original report]. See, also, [Case No. 3,323] and *In re Clark* [Id. 2,805]. Where the question relates to property of a stranger, the bankrupt need not answer. *In re Van Tuyl Ltd.* 16,880]. Nor can he be examined as to business done or property acquired after date of filing petition in bankruptcy, unless it can be connected with the bankrupt estate.

[NOTE. For subsequent examinations of the bankrupt and his wife, see Cases Nos. 3,323 and 3,324.]

<sup>1</sup> [Reprinted from 3 N. B. R. (Quarto, 26), by permission. 3 Ben. 353, contains only a partial report.]

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