

IN RE DE FORD.

Case No. 3,744.

{18 N. B. R. (1879) 454.}<sup>1</sup>

District Court, W. D. Tennessee.

INVOLUNTARY BANKRUPTCY—REGISTER'S POWERS.

The register has power to make a valid adjudication in an involuntary case where the alleged bankrupt has made default.

By T. J. Latham, Register: To the Hon. E. S. Hammond, Judge of said Court: Julius Bamberger and others filed their compulsory petition in bankruptcy in this case July 1, 1878, on which day your honor directed that the order to show cause issue; which petition and order are herewith referred. The order was made returnable July 10, 1878, but subsequently, viz., July 3rd, another order was made, changing the return day to July 16, 1878. The order to show cause is on file, returned duly executed. On the 27th day of July, 1878, S. W. Hatchett, a register of this court, by order signed by him, adjudicated said C. H. De Ford a bankrupt, which order of adjudication is herewith referred. I am asked to certify to your honor the question as to whether the register had the power to make a valid adjudication, this being a case of compulsory bankruptcy. By section 4 of the bankrupt act [of 1867 (14 Stat. 519)], it is enacted that registers shall have power to make adjudication of bankruptcy, "provided, however, that nothing in this section contained shall empower a register to commit for contempt or to hear a disputed adjudication." Sup. Ct. Rule No. 4 provides that "upon the filing of a petition in case of voluntary bankruptcy, or as soon as any adjudication of bankruptcy is made upon a petition filed in case of involuntary bankruptcy, the petition shall be referred to one of the registers in such manner as the district court shall direct." While section 4 of the act seems to clearly imply that the register may make all uncontested adjudications, rule 4 seems to imply with equal clearness that he can have no power in case of involuntary bankruptcy until after adjudication. But it must be observed that rule 4 contemplates that a compulsory petition will necessarily be contested, which is far from being the case, and the supreme court clearly recognizes this fact, and provides accordingly in framing the forms and orders for enforcing the provisions of the act At the foot of form 60, they say: "If default be made by the debtor to appear pursuant to the order upon a creditor's petition, the subsequent order may be made by a register in bankruptcy." Considering that this note is not only last in order of all the provisions on this point, but made with the attention of the supreme court directed particularly to the question now under discussion, it seems to me they could have had but one object, and that to free the question from doubt. The order of adjudication was directly before them, and they plainly provide that, in case of default by the debtor, that "order may be made by a register in bankruptcy." In this case the order of your honor was a clear recog-

dition of the sufficiency of the charges in the petition. If proved, they would establish a case of bankruptcy. A denial would raise a contest which only the district judge could hear. Default was an admission that there was no defense, and that consequently he was a confessed bankrupt, and there could be no contest. Clearly the district judge could have made the adjudication at chambers, because of the default; and, for the same reason, if the supreme court form 60 means anything, it is that there being default the "order may be made by a register in bankruptcy." Such, too has been the uniform practice of this court under the construction given by his honor. Judge Trigg.

L. and E. Lehman, for petitioning creditors.

HAMMOND, J. I concur with the register in the foregoing opinion. Section 4998, Rev. St, is a clear grant of power to the register to make adjudications of bankruptcy in cases unopposed. There is no more of an anomaly in the exercise of such a power by that officer than in its exercise in any other matter in an involuntary case where there is no contest. General order No. 4, and form No. 60, with its note 1, taken together, mean only that there shall be no reference in a contested case of involuntary bankruptcy until after adjudication. When the alleged bankrupt suffers a default, the court may refer the case to the register to enter the order of adjudication, because it appears that there is no opposition. As soon as a contest arises in any matter before the register, the act makes ample provision for its decision by the court Rev. St. § 5009. My learned predecessor made a general order referring all involuntary cases, where default was made upon the order to show cause, to the register, and authorized him to make adjudication, it being then an

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uncontested matter. It was a convenient and necessary practice, as he was necessarily often absent at long intervals from each of the three judicial districts of which he had charge. I have no doubt of his power to make that order, and I shall not disturb it. The application to vacate the former order of adjudication is therefore denied. The clerk will certify this opinion to the register.

<sup>1</sup> [Reprinted by permission.]