

IN RE FEINBERG ET AL.

Case No. 4,716.

{3 Ben. 162;<sup>1</sup> 2 N. B. R. 425 (Quarto, 137); 1 Chi. Leg. News, 210.}

District Court, S. D. New York.

March 9, 1869.

WITNESS—COUNSEL—PARTY.

1. Where, on a petition filed by an assignee in bankruptcy against one W., an injunction had been issued out of this court against him, restraining him from parting with any property that had come into his possession from the bankrupts during the four months preceding the adjudication of bankruptcy, and thereafter, on a summons issued at the instance of opposing creditors in the bankruptcy proceedings, W. attended as a witness before the register, and was sworn and claimed a right to be attended by counsel on such examination, and the bankrupts objected to his being examined at all, on the ground that W. had been made a party to the bankruptcy proceedings: *Held*, that the objection taken by the bankrupts to the examination was not well taken.

{Cited in *Re Krueger*, Case No. 7,942; *Re Stuyvesant Bank*, Id. 13,582; *Re Corn-stock*, Id. 3,080.}

2. Under the decision in *Fredenberg's Case* [Case No. 5,075], the witness was not entitled to be represented by counsel.

[I, Edgar Ketchum, 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 pertinent to the said proceedings, and were stated and agreed to by the counsel for the opposing parties, to wit: Mr. P. J. Joachimssen, who appeared for the bankrupts [Robert Feinberg, Martin Steenbock, and Gustav Pessels], and Mr. G. W. Wingate, who appeared for Townsend & Yale, creditors of the said bankrupt Isidor Wedeles, attending as a witness upon a summons issued at the instance of the said creditors, had been sworn and was under examination, Simon Stern, Esq., appearing with him as his counsel, when—First Mr. Wingate objected to such attendance by Mr. Stern, denying the right of the witness to have attending counsel upon such examination, citing the decision of the court in *Re Fredenberg* [supra]. Second. Mr. Joachimssen objected to the examination of his witness at all under the said summons, on the ground that the assignee had filed a petition in this matter against the said Isidor Wedeles with other persons as to the property of the bankrupts, and that the court had granted an injunction thereon against him and them, whereby the said Wedeles had been made a party to these proceedings, entitling him to the protection of the court against the attempts of creditors, whose representative and agent the assignee was, to take undue advantage of the said Wedeles by summoning and examining him as a witness; and hereupon the register held—

{First That however important it might be for a witness in the situation of the present one to have attending counsel, the language of the court in the case of *Freidenberg* denies it, declaring that only parties are so entitled, “unless where a witness is made a party to a new collateral proceeding, by being cited to answer for an alleged contempt.” Second.

That the objection of Mr. Joachimssen was not well taken, and that the witness might be examined.

{And at the request of the counsel, I herewith transmit the briefs filed by them here-upon.

{Edgar Ketchum, Register.}<sup>2</sup>

G. W. Wingate, for creditors.

P. J. Joachimssen, for bankrupts.

S. Stern, for witness.

BLATCHFORD, District Judge. The register was correct in both of his decisions.

<sup>1</sup> {Reported by Robert D. Benedict, Esq., and here reprinted by permission.}

<sup>2</sup> {From 2 N. B. R. 425 (Quarto, 137).}