IN RE FOWLER.

Case No. 4,998.

{1 Lowell, 161;[1] 1 N. B. R. 680.}

District Court, D. Massachusetts. June, 1867.

ACT OF BANKRUPTCY—VOLUNTARY PETITION—CONCEALMENT OF ASSETS—RIGHT OF CREDITORS TO RESIST ADJUDICATION.

1. A debtor over whom the court has jurisdiction commits an act of bankruptcy when he files his voluntary petition for adjudication, and a single creditor cannot resist the adjudication by plea and proof that the debtor is really able to pay all his debts.

2. If the debtor has property concealed, the assignee is the proper person to recover it for the benefit of the general creditors.

3. Such a concealment would be itself an act of bankruptcy, and is no ground for refusing to adjudge the debtor a bankrupt on his own petition.

4. The cases in which creditors may resist an adjudication are where there is some defect in the proceedings, or the court has no jurisdiction.

5. A petition by one partner against another is quasi in invitum and the objecting partner may show that the firm is not insolvent; though in such a case, if creditors intervened, perhaps the court might require security to be given for the payment of the joint debts before dismissing the petition.

In bankruptcy. James L. Fowler filed his voluntary petition early in June, being the thirteenth case begun under the act, and before adjudication one of his creditors filed written objections to the petition, setting out that Fowler was not unable to pay all his debts, and that his only object was to delay him in the collection of certain executions which he held against Fowler. The question whether these objections if well sustained in fact were sufficient in law to prevent an adjudication, was heard by the court

R. M. Morse, Jr., for creditor. The district court has full equity powers under the statute, analogous to those which the supreme judicial court of Massachusetts exercised under the insolvent law. It will stay proceedings that are improperly brought, as that court has often done. Thompson v. Thompson, 4 Cush. 127. That the allegations of the petition may be contested, see Holbrook v. Jackson, 7 Cush. 136, remarks of Shaw, C. J.

A. Wellington, for bankrupt

LOWELL, District Judge. The district court has power to hear and decide all contested questions, and to stay proceedings improvidently begun. The eleventh section of the statute [Act 1867 (14 Stat. 521)] seems to contemplate that voluntary petitions may sometimes be contested, for it provides that the register may make adjudication if there be no opposing party. But it is not the intent of the act that the court should inquire whether the petitioner is insolvent or not. When a debtor swears that he is unable to pay his debts in full, and files the requisite petition and schedules, he has committed an act of bankruptcy, and any creditor may then carry on the proceedings if the debtor shall fail to do so. His act is for the benefit of all persons interested, and cannot be retracted on the application

of only one of them, with or without the debtor's consent. No notice is required to creditors before adjudication, and the judge or register is only to inquire whether the debtor owes three hundred dollars. Section 11. That he is unable to pay his debts in full and is willing to surrender all his property is conclusively proved by his petition, so far as a decree of bankruptcy is concerned. He may be, in fact, fraudulent, and able and unwilling to pay his debts; but the law takes him at his word, and makes effectual provision, not only by civil but even by criminal process to effectuate his alleged intent of giving up all his property. If I should undertake, on a preliminary hearing, to decide that the petitioner has ample means to pay his debts, but is unwilling to discover them, and should dismiss the case on that ground, I should be usurping the province of the assignee, and should surrender the very powers and remedies which the bankrupt law provides for that exigency; besides giving the single creditor, who objects in order to save some attachment or security, an advantage which the law intends to avoid. The only questions open upon a voluntary petition are those which go to the jurisdiction, such as residence, and a sum total of provable debts of three hundred dollars. It is these which section 11 refers to as being possibly contested. So where one copartner petitions and another copartner resists, the latter has an interest to retain his own property, and may show that the firm is not insolvent. A creditor has no such interest in his debtor's property as a partner has in that of his firm. His rights, except where they tend to give him a preference over the general body of creditors, are fully secured in bankruptcy. And even in case of a partnership, the court might perhaps have power to order security to be given for the payment of the joint debts before dismissing the petition.

If this creditor were the only one, and the petition were intended merely to vex and hinder him, or if all the creditors joined in a protest, and were ready to discharge the debtor, there might be some ground to stay the proceedings; but to do it at the instance of one out of several, on the ground that the debtor has undisclosed assets, would be contrary to the whole spirit of the act. There is no such effectual mode of obliging a fraudulent debtor to do justice to all his creditors, as to proceed against him in bankruptcy, and the law does not intend that he should do justice to less than all. The only objection made to this adjudication is one which, if true, would be a sufficient reason

for adjudging the debtor a bankrupt, namely, that he has property concealed which ought to be used in payment of his debts. Such a fact is evidence of insolvency as well as bankruptcy, and if other evidence than the debtor's petition were admissible, would tend to confirm rather than to disprove the allegations of the petition. Adjudication ordered.

{NOTE. See In re Fowler, Case No. 4,999.}

[1] {Reported by Hon. John Lowell, LL. D., District Judge, and here reprinted by permission.}