

Case No. 5,045.

IN RE FRANCKE ET AL.

[7 Ben. 420, note.]¹

Circuit Court, S. D. New York.

1875.²

BANKRUPTCY—REARGUMENT—DECISION OP CIRCUIT JUSTICE.

The bankrupts {Charles J. and Charles F. Francke} brought this decision before the circuit court, for review, by petition of review. It was argued before Judge WOODRUFF, by the counsel for the bankrupts, there being no opposing party. Judge WOODRUFF arrived at the conclusion that the decision of the district court [Case No. 5,046] was erroneous, but he regarded the question as of such interest and importance.

that, without announcing any decision on the merits, he ordered a re-argument of the question, with a view to having it heard before Mr. Justice HUNT and himself. If, on such bearing, Mr. Justice HUNT had concurred in the view of the district court, the decree of the circuit court would, under section 650 of the Revised Statutes, have been required to be in conformity with the opinion of Mr. Justice HUNT (as the presiding judge), though not concurred in by Judge WOODRUFF; and, in such event, it was supposed that the bankrupts would have been enabled, under sections 652 and 693 of the Revised Statutes, to carry the question to the supreme court of the United States for decision, and would have done so. In the event of a decision by the circuit court in favor of the bankrupts, the case could have been carried no further as there was no opposing party. The petition of review was accordingly reargued before HUNT, Circuit Justice, and WOODRUFF, Circuit Judge.

HUNT, Circuit Justice, delivered no opinion, but filed on the 25th of June, 1875, a decision in these words: The petition of the above named bankrupts, praying for a review of the order of the district court of the southern district of New York, refusing their prayer for a certificate of discharge from their debts, is granted, and it is ordered that a certificate of discharge be issued to said bankrupts in accordance with the provisions of the bankrupt act

WOODRUFF, Circuit Judge, on the 7th of July, 1875, filed a decision in these words: The question in this case is of such interest and importance, that a re-argument was ordered, in the expectation, that, on a hearing before two judges, the proceedings might assume such a form that it could go to the supreme court for examination and final decision. But the conclusion of Mr. Justice HUNT, that the decision of the district court should be reversed, disposes of the matter in this court. The decree must conform to the direction filed by Mr. Justice HUNT.

A decree directing the granting of a certificate of discharge to the bankrupts was made by the circuit court and, on the return of such order to the district court, that court granted such certificate of discharge.

¹ [Reported by Robert D. Benedict, Esq., and B. Lincoln Benedict, Esq., and here reprinted by permission.]

² [Reversing Case No. 5,040.]