9FED.CAS.—61

Case No. 5,131.

IN RE FRISBIE.

[13 N. B. R. (1876) 349.][1]

District Court, E. D. Michigan.

BANKRUPTCY—RIGHT OF CREDITOR TO FULL DISCLOSURE—EXAMINATION OF BANKRUPT—PROTECTION AGAINST UNREASONABLE DEMANDS.

1. It is the right of a creditor to have a full disclosure, on oath, by the bankrupt of everything relating to his estate, and with such detail as will be necessary, or may be useful to the assignee in the discharge of his duties; and it is the duty of the bankrupt to submit to such examination promptly, on reasonable application.

2. A bankrupt who has fully submitted to examination, has a right to be protected against unreasonable demands upon his time for further examination; and where ample opportunity has been afforded, and an examination already had is apparently full, unless it is made to appear that such examination was collusive, or in some material and specified particulars deficient, an application for further examination may properly be refused.

Pending proceedings before the register for the bankrupt's discharge an ex parte order had been made by the register for the examination of the bankrupt [James W. Frisbie] on the application of creditors who had appeared to oppose his discharge. The bankrupt appeared, but objected to the examination, and his objections were certified into court for determination. The court referred the question back to the register for his opinion thereon. Prom the statement of the register it appears:

First. That the proceedings for the adjudication of said bankrupt were commenced on the 7th day of January, 1874, by his creditors; that the first meeting of creditors was held and an assignee elected on the 17th day of February, 1874; the whole number of creditors who, in the course of the proceedings, proved claims against said bankrupt's estate was sixty-six, amounting, as computed to the date of the bankruptcy, to the sum of one hundred and thirty-eight thousand and seventy dollars and twenty-one cents. Of these, fifty-seven in number, whose claims amounted, as computed, to the sum of one hundred and one thousand three hundred and seventy-four dollars and eighty-seven cents, were proved at or before the first meeting of creditors; an unusually large number of claims in this case (including those of E. S. Jaffray & Co. and D. Valentine & Co., amounting together to the sum of seventeen thousand eight hundred and twenty-six dollars and thirty cents), was proved so as to enable the creditors to participate in the election of the assignee. Only eight creditors whose claims amounted to four thousand five hundred and thirty-five dollars and twenty-four cents (excluding from the enumeration the claim of Mrs. Frisbie), proved their claims after the first meeting. On the 13th of July, 1874, the second meeting of creditors was held, and after due notice that, the assignee had filed

his final account, and would at that meeting apply for its allowance and his discharge, the final order of distribution was entered.

Second. On the day of the second meeting, Oberholser & Keefer filed objections to the discharge of the assignee; on the 16th of July they filed a petition for the examination of the bankrupt, and on the 18th of July, a petition to expunge the claim of Mrs. Frisbie, the bankrupt's wife. No application for the examination of the bankrupt was ever filed by the assignee, nor any application for such examination by any other creditor, until that filed by E. S. Jaffray & Co. and David Valentine & Co. on the 15th day of June, 1875. The examination of the bankrupt on the application of Oberholser & Keefer, was commenced on the 23d of September, 1874, continued on the 25th and 29th, and was read to the bankrupt, and subscribed by him on the 19th of October, 1874. Mrs. Frisbie was examined on the 29th of September, and the bookkeeper of the

bankrupt, Frank B. Webster, was examined on the 22d, 28th, and 30th of September. The examinations of the bankrupt and his bookkeeper, the books of the bankrupt being present, were conducted mainly by an expert accountant employed by the creditors for that purpose. On the 3d of October, an order was entered, fixing the 9th day of October for the hearing of the petition of Oberholser & Keefer, for the re-examination of the claim of Alary B. Frisbie. This hearing was continued from time to time until the 23d day of October, and from that day remained pending and undetermined until the 11th of March, 1875, when the proceedings for the re-examination of the claim of Mary B. Frisbie were formally discontinued by the parties who commenced them.

Third. On the 24th of April, 1875; the bankrupt filed his petition for a discharge. An order was entered on the 29th of April, fixing the 25th day of May to show cause against said petition; notice of which was first published on the 30th day of April in two papers in the city of Detroit; and notice was given to the creditors, including B. S. Jaffray & Co. and D. Valentine & Co., by mail, the notices being deposited in the post-office in Detroit on or before the 13th day of May. On the 25th day of May, the appearances of Jaffray & Co. and Valentine & Co. were entered to oppose the bankrupt's discharge; and on the 15th of June, an application was filed for an order for the examination of the bankrupt and witnesses. An order for their examination was entered, the proceedings under which were arrested by the objections of the bankrupt to any further examination, on which the questions arose which were certified to the court, and are now submitted to the register for his opinion.

The points made by Mr. D. M. Dickinson on behalf of the bankrupt, in support of his objections to any further examination are the following: He objects—

First. Because the application for such examination does not show any ground "for such examination at this time.

Second. Because nearly two and one half years have elapsed since the commencement of these proceedings to the time of this application, and the bankrupt has submitted to all orders of the court, and has appeared, from time to time, for examination as required, and has submitted to a full, thorough, and exhaustive examination under said section, which was not abated or interfered with, prevented or stopped by any solicitation, payment, or other influence of this bankrupt, or in his behalf.

Third. Because the creditors applying for such examination have, by laches, forfeited all legal rights to any further or other examination, and the application now is made only after an application for a discharge has been made, and is oppressive and harassing to the bankrupt and his family.

Fourth. Because the estate is closed, and its assignee has received his final discharge from office, so that the result of such examination cannot benefit this estate.

By Hovey K. Clarke, Register:

The first three points submitted on behalf of the bankrupt turn mainly upon the question, whether the creditors, by laches, have lost the right to require the bankrupt to submit to a further examination. The fourth point,—that "the estate has been closed"—as a general rule does not appear to me to be conclusive, though perhaps it may be so in the ease presented by these papers; because, if a creditor has a reasonable ground to believe that a further examination would disclose other property, the application for such examination ought to be entertained at any stage of the proceedings, upon a proper cause being shown for it No such case, however, is made here, nor does this examination appear to be applied for with any such object.

In determining the question of laches, which the first three points made on behalf of the bankrupt present, it is important to consider the mutual rights and duties of creditors and bankrupts in bankruptcy cases. It is the right of the creditor to have a full disclosure, on oath, by the bankrupt, of everything relating to his estate, and with such detail as will furnish to the assignee all the information in his power to render, and which may be necessary or useful to the assignee in the discharge of his duties; and it is the duty of the bankrupt promptly, on all reasonable applications, to submit to such examination. It is the right of the bankrupt, when he has submitted himself to such examination, that he should not be unnecessarily hindered in his business, or his efforts to support himself, or those dependent on him; and it is the duty of the creditor, when bankruptcy proceedings are commenced, to go forward with reasonable promptness with the prosecution of the case.

If these mutual rights and duties are here correctly stated, it will be seen that the right of a creditor to a disclosure from the bankrupt, is not an unlimited right to require the bankrupt to submit to an examination. If a full examination has been already had, either upon the application of the assignee, or of any other creditor, a subsequent application may be properly denied, unless it is made to appear that the first examination was either collusive, or deficient in some material and specified particulars. And the court whenever such an application shall be made will exercise its discretion, whether, with proper regard to the rights of all parties and especially when a bankrupt objects that he has already fully answered, an order for such examination ought to be granted.

It may not be easy to prescribe definite rules for the exercise of this discretion; it may depend more, as I think it does, upon the facts of each particular case, than is usual in appeals to courts for the exercise of discretionary

powers. But where creditors have seasonable notice of the pendency of the proceedings; where a full and apparently thorough examination of the bankrupt has been had, and a final distribution made; a creditor's application for a further examination must be supported by a showing of some deficiency, stating it, in the former examination, which is now sought to be supplied, and, the object for which it is sought; and in the absence of any such satisfactory showing, it will be presumed that the object of the application is not one which will be favorably entertained by the court Creditors are, perhaps, a little slow to admit that there are any honest bankrupts—as bankrupts are hasty to assume that all creditors are oppressive. The courts cannot sympathize in these general conclusions. A bankrupt who has made a full surrender of all his property, and is starting in his business life anew, has many very obvious difficulties to encounter, and his circumstances ought to be considered in any demand made upon his time and means (for, when required, he must attend at his own expense), in aid of the bankruptcy proceedings. The right of a creditor to a full disclosure, at any cost to the bankrupt, must be conceded and enforced when demanded. But the court must determine in any given case, when this right has been exhausted.

In this case, the examination of the bankrupt and his bookkeeper, which was conducted with unusual ability, covering apparently every subject which might throw light upon the business transactions and property of the bankrupt, and making over three hundred folios of testimony, was on file in the register's office in October, 1874. In April, 1875, the bankrupt filed his petition for a discharge. Notice of this petition was first published on the 30th day of the same month, and on, or prior to the 13th of May, 1875, notice was forwarded by mail to the creditors who made the application now under consideration. They took no steps for any further examination of the bankrupt until the last day for filing specifications of the grounds of their opposition to his discharge. They do not in their" application impeach the thoroughness or the good faith of the examination on file; they do not set forth, except in general and vague terms, any defect or ambiguity in it, or any lack of detail which needs explanation or amplification. They do not even specify any general ground of objection to the bankrupt's discharge, concerning which they need data to frame a sufficient specification, except the single one that Oberholser & Keefer were influenced by a pecuniary consideration to withdraw from and discontinue the examination. To this, it may be said that no offer was made to renew the examination after the 19th of October, arid, so far as the files in my office shed any light on the transaction, the stipulation to discontinue related principally to the reexamination of the claim of Mrs. Frisbie, and only, as an incidental result, to the examination of the bankrupt These creditors wait until the very last day when such an application as the one they made could be of any advantage to them; they are obliged to invoke, and they have received the favor of the court, to enable them to make it, and, owing to causes which cannot always be controlled, and for which

no blame need be imputed to either party, these proceedings, on their motion, have now been pending nearly five months. The fact that such delays are, to a considerable extent, unavoidable in proceedings like these—the disadvantage of which, whoever may be the occasion of them—falls upon the bankrupt, is, as it appears to me, a sufficient reason why such applications as this, unless supported by positive and undeniable merits, ought to be denied.

I have not noticed the question, whether all that has been here said does not apply more properly to the issuing of the order on which the bankrupt and the witnesses were summoned rather than to the right of the bankrupt to refuse to be examined when actually before the register, in obedience to the order. The point was expressly waived by the parties when before me, but, as a question of practice, it may be thought worthy of the attention of the court. Such orders are always granted ex parte. Convenience in practice makes it necessary that applications for such orders should be so entertained and disposed of; and being granted ex parte, the bankrupt, when appearing in pursuance to the order, should be allowed to make any objection, or raise any question which would be proper, if an opportunity to be heard had been afforded him before the order was granted. This practice, I think, a convenient one; and with this construction of the effect of the order, no injustice can result from it

I am therefore of opinion that the creditors are not entitled to the general order for the examination of the bankrupt they have obtained; and that the objection of the bankrupt to an examination under it, ought to be sustained.

John J. Speed, for creditors.

D. M. Dickinson, for bankrupt

BROWN, District Judge. The court directed an order to be entered approving the register's opinion, and vacating the order for the examination of the bankrupt.

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