

Case No. 5,132.

{5 N. B. R. 119.}¹

IN RE FRIZELLE ET AL.

District Court, E. D. Michigan.

1871.

BANKRUPTCY—HEARING ON SPECIFICATIONS IN OPPOSITION TO DISCHARGE.

On filing the specifications in opposition to a bankrupt's discharge, the hearing upon the petition is at once transferred into court by section 4 of the bankrupt act [of 1867 (14 Stat. 517)]; therefore there cannot be any examination of the bankrupt by the creditors before a register, on the application by the bankrupt for a discharge. If creditors desire a further examination of the bankrupt before the register, to be used by them in opposing his discharge, they must proceed under section 26 of said act.

I, Benjamin J. Brown, one of the registers of said court in bankruptcy, do hereby certify that in the course of the proceedings in this matter before me, a question arose pertinent to the proceedings, which was stated and agreed to by the counsel for the opposing parties, to wit: J. M. Smith and George B. Brooks, who appeared for the assignee and sundry creditors, and John J. Wheeler, who appeared for said bankrupts [S. F. and C. S. Frizelle]. On the joint petition of said bankrupts, it was ordered that a hearing be had thereon on the thirty-first day of December, eighteen hundred and seventy. By consent the hearing was adjourned from time to time to the fourth day of March inst On that day counsel for the assignee and creditors asked to examine Seymour F. Frizelle, one of said bankrupts, as to the disposition of his property, to which counsel for said bankrupt objected on the ground that he had already been examined by them upon the subject; which, as a matter of fact, is true, said bankrupt having been examined at great length in the month of April, in the year eighteen hundred and seventy, by the same counsel. The objection being made, I declined to proceed with the examination except on cause shown. Thereupon Mr. Smith made the subjoined affidavit, which, in the opinion of the register, did not show such cause. If the right to enter upon the examination had existed at the day fixed for the hearing, it could of course be exercised on any day to which it was adjourned—the hearing being continuous. The showing, therefore, as to the inadvertence was immaterial; and the fact of any examination having occurred at the hearing assumed in the affidavit was not well founded. There had been no “former examination” or any examination whatever at the hearing. The register is not only desirous, but even anxious, that the fullest opportunity should be allowed for the examination of a bankrupt, but he is constrained to follow a rule which he deems not only reasonable, but well established. In re Adams [Case No. 40]; In re Isidor [Id. 7,105]. The bankrupt took the oath prescribed by section 29 of the bankrupt act, and the hearing was adjourned to the eighteenth instant, at nine o'clock A. M., without prejudice.

“Irving M. Smith, being duly sworn, says that he is the attorney of Farrand, Sheley & Co., Dr. D. Jaynes & Sons, J. C. Ayer & Co., and other creditors of said bankrupts; that on the former examination of said bankrupt, upon his application for a discharge, he, deponent, inadvertently omitted to examine said Seymour F. Frizelle upon a material point bearing upon the question as to whether he is entitled to the discharge asked for, and that as the attorneys for said creditors, he now desires to proceed with said examination, and further says not. Irving M. Smith.

“Sworn and subscribed to before me, this fourth day of March, eighteen hundred and seventy one. Benj. J. Brown, Register.”

LONGYEAR, District Judge. On the entry of appearance of creditors to oppose a discharge, all proceedings upon the petition for discharge are suspended until specifications shall be filed under section 31, and rule 24, except perhaps that the oath to be taken by the bankrupt to obtain his discharge as prescribed by section 29, may be administered. In re McVey [Case No. 8,932]. On filing the specifications, the hearing upon the petition is at once transferred into court by operation of section 4. It will be seen, therefore, that there could not be any examination of the bankrupts, or either of them, by creditors, on the application by the bankrupts for a discharge, before the register; because, if no specifications had been filed, and the time had not expired for filing lie same, all proceedings upon the application were suspended. If the time for filing the specifications had expired, then the case stood as if no appearance to oppose had been entered, and of course no examination of the bankrupts by creditors could be called for by way of such opposition. If specifications had been filed, then the application was no longer before the register. So far, therefore, as the motion was for the examination of the bankrupts on their application for a discharge, the same was properly denied by the register. In re Mawson [Id. 9,317]; In re Puffer [Id. 11,459].

If the creditors desire a further examination of the bankrupts, or either of them, before the register, to be used by them in opposing a discharge, or for any other purpose, they must proceed under section 26. Such a proceeding may be entertained by the register, and any question arising thereon, proper to be certified, may be certified by him. The granting of such an application is, however, entirely in the discretion of the court, and I should be very much inclined to adopt the views and opinion of the register as to the justice and propriety of allowing

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such further examination, all previous examinations having been had before him, and the circumstances having a bearing upon the question being personally known to him.

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