

Case No. 5,659.
[8 Ben. 419]¹

IN RE GRAHAM.

District Court, S. D. New York.

May, 1876.

WITNESS—PRIVILEGE—CRIMINATION.

It having been testified in bankruptcy proceedings, that the bankrupt had lost a large sum of money, a short time before his bankruptcy, in a gambling-house kept by B. and M. at No. 16 "West 24th street, New York, B. and M. were summoned to appear before the register for examination. The question was put to B.: "What year was it you removed from No. 16 West 24th street?" B. refused to answer, on the ground that the answer to the question would tend to criminate him. The question was put to M.: "Did you ever reside at No. 16 West 24th street?" M. refused to answer on the same ground: *Held*, that the witnesses were privileged from answering the questions.

[Cited in *U. S. v. M'Carthy*, 18 Ped. 88.]

In this case the register certified that a witness had testified before him that one Samuel E. Briggs and one Charles N. Moody were the keepers of a gambling-house at No. 16 West 24th street, in the city of New York; that the above named bankrupt [William M. Graham] had lost at gaming, in said house, over \$30,000, which he had paid to Briggs and Moody a short time before the adjudication of bankruptcy; that thereafter a summons was issued by the register requiring Briggs and Moody to come before him for examination; and that, they having been

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sworn, the following question was put to the witness Briggs: "What year was it you removed from No. 16 West 24th street?" who answered, that from the previous examination of witnesses, he perceived that he was charged with participation in a gambling transaction, which, if true, exposed him to a criminal prosecution under the laws of the state of New York, and he declined to answer any question on the subject on the ground that the answer to the question now put might tend to expose him to such criminal prosecution and criminate him. The register further certified, that the following question was put to the witness Moody: "Did you ever reside at No. 16 West 24th street?" that he made the same answer as the witness Briggs; and that the register thereupon, on request, certified to the court the question, whether the witnesses should answer, with his opinion that the witnesses should be required to answer the questions.

BLATCHFORD, District Judge. I think that the witnesses were privileged from answering the questions.

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