Case No. 5,923.

IN RE HALL.

{15 N. B. R. 31.}[1]

District Court, E. D. Michigan. Nov., 1876.

BANKRUPTCY—CREDITORS' PETITION—AGGREGATE AMOUNT OF DEBTS—NUMBER OF CREDITORS.

1. Under the ordinary allegation' in a creditors' petition that petitioners constitute one

fourth in number, etc., and that the aggregate of their debts amounts to at least one-third of the provable debts, etc.; if it appears that the claims of several of the petitioners are each less than two hundred and fifty dollars in amount, the petition is not thereby rendered invalid.

2. In making up the requisite number, petitioners may compute those simply whose debts exceed two hundred and fifty dollars, or they may proceed upon the hypothesis that they represent one-quarter of the entire number of creditors, in which case those of less amount than two hundred and fifty dollars may be reckoned.

On motion to dismiss creditors‘ petition upon the ground it did not set forth that the requisite number of creditors had joined in it.

W. E. Jackson, for debtor.

E. Y. Swift, for petitioning creditors.

BROWN, District Judge. By section 39 of the bankrupt act [of 1867 (14 Stat. 536)] as amended, a debtor may be adjudged a bankrupt "on the petition of one or more of his creditors, who shall constitute one-fourth there of, at least, in number, and the aggregate of whose debts provable under this act amounts to at least one-third of the debts so provable;" * * * "and in computing the number of creditors, as aforesaid, who shall join in such petition, creditors whose respective debts do not exceed two hundred and fifty dollars shall not be reckoned." But to this provision there is a qualification that "if there be no creditors whose debts exceed said sum of two hundred and fifty dollars, or if the requisite number of creditors holding debts exceeding two hundred and fifty dollars fail to sign the petition, the creditors having debts of a less amount shall be reckoned for the purposes aforesaid." The petition in this case contained the ordinary allegation "that the petitioners constitute at least one-fourth in number of the creditors of said Robert L. Hall, and that the aggregate of their debts provable under the said acts amounts to at least one-third of the debts so provable." As it appears, upon the face of the petition, that of the twelve creditors who signed It, but two of them held claims exceeding two hundred and fifty dollars, it is insisted the petition is invalid. It is conceded that in order to force a party into bankruptcy there must unite at least one-third of the creditors in amount, irrespective of the magnitude of their claims. It is claimed, however, that as but two creditors hold claims of over two hundred and fifty dollars, the requirement of the statute as to number is not complied with. In support of this is cited the Case of McKibbin [Case No. 8,859], decided by this court.

It will be observed that in section 39 there are two theories or bases upon which the number may be computed, and the petitioning creditors apparently have an option in making up the requisite proportion. They may compute those simply whose debts exceed two hundred and fifty dollars, in which case only creditors representing that amount should join to make up the number; or, if the requisite number of those holding that amount fail to sign or are not procured, they may proceed upon the hypothesis that the petitioning creditors represent one-quarter of the entire number of creditors, in which case those of

a less amount than two hundred and fifty dollars may be reckoned. The difiiculty in the Case of McKibbin was occasioned by the peculiar language used in the petition. It was not the ordinary allegation that is found here, but it was averred that the petitioners "constituted at least one-fourth in number, upon the basis of two hundred and fifty dollars and upwards, of the creditors of said James McKibbin." Now as it appeared that, of the seven petitioners, only five held debts to the amount of two hundred and fifty dollars and over, there was evidently a failure to sustain the allegation that the petitioners constituted a fourth in number, upon the basis of two hundred and fifty dollars. It was held that the names of those two could not be stricken out as surplusage, and that the court could not regard the petition as that of the remaining five creditors under that allegation. The case was practically decided upon the peculiar language of the petition. The result, even then, might have been different had the petition averred that those of the petitioners whose debts exceeded two-hundred and fifty dollars constituted one-fourth at least in number, upon the basis of two hundred and fifty dollars, and that the aggregate of the debts of all the petitioners provable under said acts amounted to at least one-third of the debts so provable. But, under the allegation here used, I think the creditors were at liberty to make up the requisite number, either by computing those only whose debts exceeded two hundred and fifty dollars, or by uniting one-quarter in number of all the creditors. That they have chosen the latter course is evident from the fact that ten of the twelve creditors hold claims of less than two hundred and fifty dollars. No allegation is necessary that the larger creditors were applied to and refused to join, because the language of the section is that if they fail to sign the petition, from whatever cause the failure proceeds, smaller creditors may be reckoned. This was practically the view taken by Judge Lowell in the Case of Currier {Case No. 3,492}, and I coincide with him in his interpretation of the law. It seems to me that the ruling in this case applies with full force here, and that the creditors have chosen to base their allegation upon the fact that one-fourth of the entire number have petitioned to have the debtor adjudged a bankrupt Had the petition followed the language of the Case of McKibbin, where it was expressly based upon the petition of one-fourth of the number of creditors, and it appeared upon the face of the petition that several creditors were of small amount, I should have held the petition

invalid; but I think this case clearly distinguishable from that, and that it falls rather within the rule laid down in the Case of Currier above cited. The exceptions to the petition are therefore overruled.

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