

Case No. 6,210.

IN RE HATCHER.

[1 N. B. R. 390 (Quarto, 91); 1 Am. Law T. Rep. Bankr. 48.]¹

District Court, D. Kentucky.

1868.

BANKRUPTCY—PETITION—EFFECT OF FAILURE OF PETITIONER TO APPEAR—DISMISSAL.

1. Where a petitioner in bankruptcy fails to attend before the register on the day fixed in the order of reference, he may, nevertheless, be adjudicated a bankrupt within a reasonable time thereafter.
2. If he does not appear within a reasonable time, upon the fact being reported to the court by the register, the petition may be dismissed.

[In bankruptcy. In the matter of Benjamin H. Hatcher.]

BALLARD, District Judge. The register certifies that the petitioner failed to attend before him on the day fixed in the order of reference, and that he has not since appeared, and that consequently he declined to make adjudication. He asks whether or not he has “power to appoint another day for the bankrupt’s attendance, that is, enter upon his memorandum that he sat at the time and place designated in the order of reference, and adjourned to some future day to allow the bankrupt to report, or should a new order of reference be obtained?” I see no necessity for any new order of reference. The case has already been referred, and general order No. 4 provides that when it is referred to a register “thereafter all the proceedings required by the act shall be had before him, except,” &c. True, the order of reference, form No. 4, designates a day on or before which the petitioner shall attend before the register, and rule 2 of this court authorizes the register to fix the times when he will act upon the several matters arising in the case referred to him, other than the attendance of the bankrupt as fixed by order form No. 4; but I think neither the order, nor the rule, prevents the register from making adjudication, and taking other proceedings when the bankrupt does appear within a reasonable time after the day fixed and asks for the appropriate orders. The petitioner should, of course, explain in a written affidavit why he did not attend as required by the order of reference, because if he wilfully disobey this, or any other, order he may not be allowed his discharge; but an adjudication of bankruptcy can be none the less valid because it is entered on a day subsequent to the time fixed in the order of reference. If the bankrupt does not appear within a reasonable time, upon the fact being reported by the register to the district court, the petition may be dismissed.

¹ [Reprinted from 1 N. B. R. 390 (Quarto, 91), by permission. 1 Am. Law T. Rep. Bankr. 48, contains only a partial report.]