IN RE HILL.

Case No. 6,484.

{7 Ben. 378;[1] 10 N. B. R. 133; 1 Am. Law T. Rep. (N. S.) 421; 20 Int. Rev. Rec. 81.}

District Court, S. D. New York. July, 1874.

PRACTICE—ADJUDICATION—ACT OF BANKRUPTCY.

1. A petition in involuntary bankruptcy was filed in January, 1874. A trial was had before the court, and, on the 18th of March. 1874, a memorandum signed with the initials of the judge, was made by him on the petition, directing that an order of adjudication be entered on the first of the two acts of bankruptcy alleged, which was that the debtor had stopped payment of his commercial paper, and did not resume payment of it within, fourteen days. No order of adjudication was entered before the passage of the bankruptcy amendment act of June 22, 1874 {18 Stat. 178}, when the creditor applied to have the order of adjudication entered mine pro tune as of March 18, 1874. *Held,* that the order could not be so entered.

2. To obtain the entry of the adjudication, the creditor must amend the petition, so as to make it conform to the act of June 22, 1874, both as to the number of creditors joining in it and the act of bankruptcy.

{In the matter of Joseph M. Hill, an alleged bankrupt.}

H. C. Lockwood, for petitioning creditor.

J. D. Reymert, for debtor.

BLATCHFORD, District Judge. The petition in this case, in involuntary bankruptcy, was filed on the 17th of January, 1874. The order to show cause was returnable on the 24th of January. On that day the debtor appeared and filed a denial in the usual form, and demanded a trial by the court, and an order was made referring it to a commissioner, to take the evidence. The commissioner's report of the evidence was filed on the 6th of March, the matter was brought to hearing before the court, and, on the 18th of March, a memorandum, signed by the initials of the judge, was made by him on the petition, directing that an order of adjudication be entered. No such order was entered prior to June 22, 1874, probably for the reason that the petitioning creditor did not desire or procure such order to be entered. I am now asked to sign such an order nunc pro tune, as of the 18th of March. I do not see how this can be done. The test must be whether a formal order of adjudication has been entered. Until the entry of such formal order, a discontinuance has always been allowed by this court to be entered, if desired by the petitioning creditor. A direction that such order be entered, the order not having been prepared in form, is no more than the decision of the judge. It is not a judgment, or an entry on the files of the court that the court adjudges thus and so. The form of an adjudication of bankruptcy on a creditor's petition is prescribed by form No. 58. Nothing else is an adjudication or an adjudging

and, therefore, the debtor in the present case remained, on the 22d of June, 1874, to "be adjudged a bankrupt" under the provisions of the act of 1874, that is, on such a petition as I have held, in the case of In re Scull {Case No. 12,568}, to be the necessary form of petition. The clerk will enter in the present case the like form of order with that directed in the Case of Scull, if either party desires it.

It is proper to say that there are two acts of bankruptcy alleged in the petition. The direction for an order of adjudication was that it should be entered on the first act of bankruptcy alleged. That is an allegation that the debtor, on the 22d of November, 1873 (56 days before the filing of the petition), being a merchant, stopped payment of his commercial paper, and did not resume payment of it within a period of fourteen days. If the petition is to be proceeded with as to such first act of bankruptcy, it must conform to the act of 1874, by averring that the commercial paper was made or passed in the course of the business of the debtor as a merchant, and that he did not resume payment of it within a period of forty days. An amendment to that effect will be allowed to the made within the twenty days allowed for the amendment in regard to the number and amount of creditors.

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