

Case No. 7,128.

{8 N. B. R. 424.}<sup>1</sup>

IN RE JACKSON.

District Court, E. D. North Carolina.

1874.

BANKRUPTCY—DISCHARGE—EXAMINATION OF BANKRUPT—COSTS—WHO  
LIABLE.

1. Where, on the return of an order to show cause why a bankrupt should not be discharged, a creditor appeared and asked leave to examine the bankrupt, *held*, the creditor must pay the register the cost per folio of taking the deposition, but not his per diem, or fees for administering oath, or granting certificate.
2. The creditor must pay for such services performed by the register at his request, as are in addition to those that the register would have been compelled to perform had the creditor not appeared.
3. The bankrupt, or his estate, must pay for such part of the services as would have to be necessarily performed had the creditor not appeared.
4. The party examining has a right to have the examination reduced to writing, and sworn to and subscribed by the witness.

{In bankruptcy. In the matter of Alfred Jackson.}

I, Wm. A. Guthrie, one of the registers of said court in bankruptcy, do hereby certify that, in the course of the proceedings in said cause before me, the following questions, pertinent to the said proceedings, arose, and were stated and agreed to by the opposing parties, to wit: First. Whether the register in bankruptcy is required by law to take down, in writing, the examinations of a bankrupt at the meeting of creditors to show cause, upon being requested to do so by a creditor? Second. Whether, if it is necessary to reduce the examination to writing, the fees for the service should be paid by the bankrupt or the creditor? On the 6th day of February, 1873, before me at a meeting of creditors in the above matter to show cause, personally appeared John W. Hinsdale, Esq., attorney for James M. Gilvany, a creditor, and B. Fuller, Esq., attorney for the bankrupt, and also the bankrupt himself. J. W. Hinsdale then asked leave to examine the bankrupt under oath, which was granted, and the bankrupt duly sworn by the register. Thereupon the above questions were raised as to reducing the examinations to writing, J. W. Hinsdale insisting that it was the duty of the register to take down the examination in writing. The register was of the opinion: 1st. That the examination was not necessarily required to be reduced to writing, as in case of taking testimony. 2d. That if the creditor desired the examination to be taken down in writing he should pay for the services.

In re JACKSON.

And the said parties requested that the same should be certified to your honor for your opinion thereon. Meeting to show cause was then adjourned until March 14th, 1873.

J. W. Hinsdale, for creditor.

B. Fuller, for bankrupt.

BROOKS, District Judge. When the bankrupt appears before the register to take and subscribe the final oath, he may be examined by any creditor, or by the assignee in the interest of creditors, with the view to show that the requirements of the act, or some one of such requirements, have not been conformed to. To this end any creditor may question him particularly, whether he has done or permitted any of the acts forbidden, or if he has failed or omitted to perform any of the acts specified to be done in the twenty-ninth section of the act [of 1867 (14 Stat. 531)]. If the creditor making such examination desire the questions and answers, or the examination in any form, reduced to writing by the register, such creditor must pay to the register his fees per folio—as for other depositions. This would be a service rendered at such creditor's request, and would come under an express provision of the law.

In conducting such examination the register should use that discretion which a judge is often called upon to exercise. He should not so restrict the inquiries as to keep back any pertinent truth, nor allow a useless consumption of time, or the debtor to be merely harassed. The fees to be paid by the creditor would not embrace the per diem compensation to the register, or his fee for administering the oath, or the certificate referred, as these are required to be performed if no creditor appears.

JACKSON, The HALLIE. See Case No. 6,451.

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