

13FED.CAS.—56

Case No. 7,423.

IN RE JOHNSTON.

{14 N. B. R. 569.}<sup>1</sup>

Circuit Court, N. D. Illinois.

Nov., 1876.

BANKRUPTCY—ISSUANCE OF A COMMISSION TO ANOTHER STATE—POWER OF CIRCUIT COURT OF SUCH STATE OVER WITNESSES.

When a commission is issued by the bankrupt court and sent to another state, the circuit court in such state may compel a witness to testify or punish for a refusal to testify.

{In the matter of John J. Johnston, a bankrupt.}

In this case, on application of the assignee, a commission was issued out of the United States district court for the Northern district of New York, to take the testimony of one Frederick L. Fake, at Chicago, “with reference to all matters relating to the disposal or condition of the property of the bankrupt Johnston, or any other matter or thing provided for by section 5086 of the Revised Statutes of the United States;” and a summons, issuing out of the circuit court of the United States for the Northern district of Illinois, was duly served by the marshal upon the witness, and his fees tendered him. The witness appeared before the commissioner, with counsel, at the time and place appointed, and, under the advice of counsel, refused to testify. The commissioner certified the facts to Judge BLODGETT, whereupon a rule to show cause why an attachment for contempt should not issue was entered. In response to the rule, counsel for the witness denied the authority of the district court of New York to issue a commission of this nature, and also the authority of this court to enforce the attendance of the witness, or to punish for contempt in case of refusal to answer.

Tenneys, Flower & Abercrombie, for witness.

Becker & Dale, for assignee.

BLODGETT, District Judge. Under sections 5003, 5087, Rev. St, such commission may issue, and the attendance of the witness before the commissioner enforced, or the witness punished for contempt in case of refusal to testify.

<sup>1</sup> [Reprinted by permission.]