

Case No. 7,782.

IN RE KING.

{3 Dill. 364;¹ 2 Cent. Law J. 92.}

Circuit Court, D. Nebraska.

Jan. 1875.

BANKRUPT ACT OF JUNE 22, 1874—DEFECTIVE SPECIAL VERDICT—PETITION FOR REVIEW IN BANKRUPTCY.

On a creditor's petition in bankruptcy on which issue was taken, a jury had rendered a defective special verdict, but no general verdict, before the amended bankrupt act of June 22, 1874 [18 Stat. 178], was enacted, and the case was pending on a motion by the creditors for an adjudication of bankruptcy on the special verdict, and notwithstanding it when said amendatory act took effect, and afterwards by consent of court

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an amended petition under said amended act was filed and issue taken thereon: *Held*, that the action of the court in subsequently dismissing the case on the strength of the special verdict was erroneous, and that the issues made under the amended act by the amended petition should have been determined.

A creditor's petition in bankruptcy was filed against [Robert G.] King, March 17, 1874. Denial of acts of bankruptcy, and trial to jury May 4, 1874, who returned a special verdict. Motion by petitioning creditors for an adjudication on the special verdict and notwithstanding the same, while this motion was undetermined, the amended act of June 22, 1874, went into effect, and on October 17, 1874, an amended petition was filed by consent of court bringing in additional creditors, and stating acts of bankruptcy in compliance with said amended act. King filed an answer denying the alleged acts of bankruptcy, and denying that the requisite number and amount of creditors were concurring in the proceeding. The court found, it seems, that the requisite number were assenting to the proceeding; but on the 18th day of November, 1874, entered an order "stating, that the cause came on to be heard on the verdict of the jury rendered at the May term, before the pleadings were changed to comply with the act of June 22, 1874, and the court being fully advised, orders that the proceedings be dismissed, and that the marshal turn over to R. G. King all the property held under the provisional warrant heretofore issued." To review and re-examine this order, the petitioning creditors bring the case here by petition in review.

C. S. Chase and W. D. Bartholomew, for creditors.

DILLON, Circuit Judge. I am of opinion that the special verdict is defective in not covering the issues or affording a basis of facts for a decision, for or against the petition. The result is, that there was simply a mis-trial, leaving the case pending in the bankruptcy court. It was so pending when the amended bankrupt act of June 22, 1874, took effect, and the retroactive provisions of that act applied to it as an undetermined case, requiring the assent of one-fourth in number and one-third in value of the creditors.

The petition was amended, alleging that the requisite proportion of creditors as to number and value concurred in the proceeding, and stating acts of bankruptcy to comply with the new provisions of law, and issue was taken on this amended petition by the debtor. These issues as to the acts of bankruptcy were never tried, but the court entered an order on the 18th day of November, 1874, based upon the special verdict of May 4th, 1874, dismissing the petition of the creditors and all proceedings under the same, and ordering the marshal to restore to the debtor all property held under the provisional warrant. This was erroneous. The special verdict being defective, there was a mis-trial, leaving the case pending in the court, and the order ought to have been to set aside the special verdict and to have the issues made by the amended pleadings, tried and determined in the usual manner. The order of the 18th day of November, 1874, above mentioned, is reversed and set aside, and the district court ordered to proceed in the case in a manner

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not inconsistent with the order herein made, and to require the marshal to take possession of the property of debtor. Ordered accordingly.

¹ [Reported by Hon. John Lowell, F. Dillon, Circuit Judge, and here reprinted by permission.]