

Case No. 7,818.

IN RE KINGSLEY.

[6 Ben. 300;¹ 7 N. B. R. 558.]

District Court, S. D. New York.

Jan., 1873.

EXAMINATION OF BANKRUPT.

Where an order for the examination of a bankrupt is issued at the instance of a creditor who has duly proved his debt, the bankrupt cannot refuse to be sworn under the order, by reason of his claiming that he has an offset which extinguishes the creditor's debt, and desires to file a petition for the re-examination of the claim.

In this matter the register certified to the court, that he had made an order for the examination of the bankrupt [Norman v. Kingsley], under the 26th section of the bankruptcy act [of 1867 (14 Stat. 529)], on the application of one Showers, a creditor who had duly proved his debt; that, on the return of the order, the bankrupt declined to be sworn, claiming that Showers was not a creditor, and was not returned as such in the schedule attached to the petition, and that any indebtedness which had ever existed from the bankrupt to Showers had been offset and extinguished by a counter indebtedness from Showers before the filing of the petition; and that he desired to file a petition for the re-examination of Showers' claim.

By the Register:

[I, Henry Wilder Allen, register in bankruptcy, of said district, having the above entitled matter in charge, do hereby certify that on the 4th day of January, 1873, upon the application of Daniel H. Showers, a creditor of said bankrupt, who has duly proved his debt herein, I made and issued an order for the examination of said bankrupt, under the twenty-sixth section of the bankrupt act, and appointed the 13th day of January, 1873, at 3 o'clock p. m., as the time for the said examination, which said order was duly served upon the said bankrupt; that on the said 13th day of January, 1873, pursuant to said order, the said bankrupt attended before me with F. C. Bowman, Esq., his counsel, and the said creditor appeared by William Peet, Esq., his counsel, and the said examination being called, the said bankrupt, by advice of counsel, declined to be sworn and examined under the twenty-sixth section of the bankrupt act, under the order issued upon the application of the said Daniel H. Showers, claiming that said Showers is not a creditor, and was not so returned on the schedules of the said bankrupt, and that any indebtedness that ever existed from said bankrupt to said Showers, was offset and extinguished by a counter indebtedness from the said Showers to the said bankrupt before the filing of his petition, and for the further reason that he, the said bankrupt, desires to file a petition for the re-examination of the said claim. And at the request of the counsel for said parties I have made this certificate, that such order may be made herein as to the court may seem just and proper.]²

In re KINGSLEY.

BLATCHFORD, District Judge. So long as the debt stands proved and unimpeached, the claim stated to have been made by the bankrupt before the register furnishes no ground for a refusal of the bankrupt to be sworn and examined.

¹ [Reported by Robert D. Benedict, Esq., and here reprinted by permission.]

² [From 7 N. B. 558.]