

Case No. 7,916.

IN RE KOCH.

[1 N. B. R. 549 (Quarto. 153); 1 Am. Law T. Rep. Bankr. 121; 15 Pittsb. Leg. J. 531.]<sup>2</sup>

District Court, N. D. New York.

Dec., 1868.

BANKRUPTCY—EXAMINATION OF BANKRUPT—FRAUDULENT  
REPRESENTATIONS—CRIMINATING ANSWERS—RIGHT OF BANKRUPT TO  
REFUSE TO ANSWER.

1. A bankrupt on his examination before the register, may be examined to show that the debt to the examining creditor was fraudulently contracted.
2. The bankrupt may decline to answer, if by so doing he would criminate himself.
3. The register cannot make any binding decision, or compel a witness to answer, if he refuses.  
[Cited in Re Bond, Case No. 1,618.]
4. The register must report the testimony, if required.

In this case, certain creditors of the bankrupt [Jacob A. Koch] having obtained an order for his examination before Mr. Register Husbands, at Rochester, the counsel for the creditors asked the bankrupt this question: "State whether or not, on your purchase of goods of O. & H., in November, 1864, you made any representations to them of, or concerning, your pecuniary condition at that time?" The counsel for the creditors offered to show, by the bankrupt, that this debt was fraudulently contracted by him. The counsel for the creditor objected that it was not competent to show that any debt was fraudulently contracted; that such fraud would merely make the discharge of the bankrupt inoperative as to the specific debt, but would not tend to defeat or prevent his discharge; and also claimed that the bankrupt was excused from testifying on that subject.

The questions raised were certified for the opinion of the court.

"First. Can a bankrupt on his examination before a register, be examined to show that the debt to the creditor making the examination, was fraudulently contracted?"

HALL, District Judge. "In disposing of this question, I proceed on the ground that the creditor has a right to examine the debtor in order to determine whether he can prove, by his testimony, and otherwise, the fraud, charged. If he can, he may decline to prove his debt, but if the bankrupt denies the fraud, and the creditor cannot otherwise prove it, the creditor's interest may require him to prove his debt. I think the creditor is entitled to examine as to any matter which may be material in determining his conduct in respect to the proof of his debt, or the proceedings in bankruptcy."

"Second. If he may, is he bound to answer, or may he, as a personal privilege, decline to answer?"

"Yes, if to answer would criminate himself."

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“Third. Has the register authority to decide questions as to the admissibility of evidence on such examinations, subject to exceptions under rule 17; or must he take the testimony subject to objections and report it to the court according to general order 10?”

“I do not understand that the register can make any binding decision, or compel a witness to answer if the witness refuses.”

“Fourth. If the register may so decide, and sustains an objection, how can the testimony be presented to the court, if the court should deem it proper testimony; and if he cannot so decide must he take everything called for by counsel on the examination?”

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“The register should, I think, take and report the testimony if required, notwithstanding his decision.”

<sup>2</sup> [Reprinted from 1 N. B. R. 549 (Quarto, 153), by permission. 1 Am. Law T. Rep. Bankr. 121, contains only a partial report.]