IN RE MANN.

Case No. 9,033.

{13 Blatchf. 401;[1] 14 N. B. R. 572.}

Circuit Court, N. D. New York. June 7, 1876.

BANKRUPTCY—REQUISITE NUMBER OF CREDITORS—PETITION—BELIEF—OATH.

1. In a petition in involuntary bankruptcy, under section 39 of the act of March 2d, 1867 (14 Stat. 536). as amended by section 12 of the act of June 22d, 1874 (18 Stat. 180), it is sufficient to state upon belief, without averring either knowledge or information, that the petitioning creditors constitute the required number, and that their debts constitute the required amount.

{Cited in Be Roberts, 71 Me. 392.}

2. Where the petition is in such form, the oath to it is not insufficient, if it is the form of oath prescribed in form No. 54 of the forms in bankruptcy, although such form of oath purports to cover only matters which are stated on knowledge and matters which are stated on information and belief.

{In review of the action of the district court for the Northern district of New York.}

{In the matter of Henry A. Mann, an alleged bankrupt.}

E. F. Bullard, for petitioners.

JOHNSON, Circuit Judge. The petition of review brings up for consideration the decision of the district judge upon a demurrer to a petition in involuntary bankruptcy. The alleged defect in the petition consists in this, that the creditor's petition states upon belief, without alleging either knowledge or information, that she constitutes one-fourth in number of the creditors of the alleged bankrupt whose demands exceed $250 and are provable; and that her demand constitutes one-third of the provable debts, under the act.

The 32d of the general orders in bankruptcy, adopted by the supreme court, April 12th, 1875, ordains, that the several forms specified in the schedules annexed to the former general orders, for the several purposes therein stated, shall be observed and used, with such alterations as may be necessary to suit the circumstances of any particular case. Among the forms thus sanctioned was that of a creditor's petition, No. 54, in which is contained the allegation of the petitioning creditor, that he "believes" that said debtor "owes debts to an amount exceeding the sum of three hundred dollars." Now, that circumstance is as essential as any other to make out a case for involuntary bankruptcy under the statute. It is sufficiently averred, as matter of pleading, by the averment that the petitioner so believes. If we look to the reason of it, belief upon such a subject is all that, in the nature of things, a stranger can have. Information is important only as leading to belief, unless the sources of information, and the details obtained, are to be set forth, and the court is to judge as to the greater or less probability of truth of the information obtained. But, as pleading, this is quite irrelevant. In pleading, the party is to make his allegations, upon subjects that lie within his personal knowledge, positively, but, upon other points, belief, equally with information and belief, suffices to present an issue. The facts stated on

belief in this case, which have been before adverted to, relating to the question whether a sufficient proportion, in number and amount, of creditors have united in the petition, are of the same general character as that fact which the supreme court has directed to be stated on belief. It is, at least, as easy for a petitioning creditor to know, or to be informed, that the debtor owes more than $300, as it is that he should know, or be informed, that one-fourth in number and one-third in amount of creditors have united in the petition; and the same reason which makes the former sufficient ought to cover the latter.

The special provision of the statute, enabling the debtor to controvert this particular allegation, and the court in that case to require of him a complete list of his creditors, and the further provision, that, in case a sufficient number and amount of creditors have not joined, a reasonable time shall be granted for other creditors to unite in the petition, seem to me to show that no substantial purpose would be served in holding that an averment on belief is not sufficient.

There is no novelty in holding, that, as matter of pleading, an allegation upon belief is sufficient. Such was the established rule in respect to sworn pleadings in the court of chancery in New York, where the matters stated, charged, averred, admitted or denied, were required to be stated positively, or upon information or belief only, according to the fact (N. Y. Ch. Rules, No. 18, Ed. 1839); and either mode of statement was sufficient as a pleading.

In re Joliet Iron & Steel Co. [Case No. 7,436]; In re Scammon [Id. 12,430]; In re Scull [Id. 12,568]; and In re Keeler [Id. 7,638],—are not inconsistent with the views before expressed. None of them go further than to hold that an allegation on information and belief is sufficient, but none of them declares an allegation on belief alone to be insufficient.

In respect to the form of the verification, if that question arises on demurrer (In re

Simmons {Id. 12,864}), it is that prescribed by the supreme court in the form before referred to; and any criticism in respect to the facts stated on belief alone in this case, as not covered by the form of the verification, would be alike applicable to the form sanctioned by the general orders in bankruptcy.

I am, therefore, of opinion, that the learned district judge ought not to have allowed the demurrer; that his order thereupon ought to be reversed; that the allegations of the petition in that behalf should be deemed sufficient; and that the proceedings should be remitted to the district court, to be proceeded in according to law.

[1] {Reported by Hon. Samuel Blatchford, District Judge, and here reprinted by permission.}