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## Case No. 9,553.

IN RE MILLER.

{1 N. B. R. 410 (Quarto, 105); 1 Am. Law T. Rep. Bankr. 121.}[1]

District Court, W. D. Pennsylvania. Jan. 28, 1868.

BANKRUPTCY—ORDER TO DISMISS PROCEEDINGS—PETITION OF ALL PARTIES.

When the petitioning creditor, the bankrupt, and all the creditors who have proved their debts, desire the court to dismiss the proceedings before the choice of an assignee, an order will be made by the court directing that the proceedings be dismissed, and allowing the messenger to deliver up to the bankrupt the property seized, upon the payment of costs.

{Cited in Judson v. Courier Co., 8 Fed. 425.}

This being the day to which the first meeting of creditors was adjourned, at the request of said creditors, and also the day 296 fixed for hearing the creditors, upon their petition praying for the discontinuance of the proceedings in this matter, which said petition was referred to me by special order of said district court, "with power to investigate the facts and to report upon the law and expediency of such discontinuance. And further, that said register call a meeting of the creditors," &c. And further, that said register report as soon as may be thereafter the action of said meeting to this court, and as to the power of the court to order such discontinuance. I sat, at the time and place above mentioned, for the purpose of performing the duties so assigned to me.

All the creditors of said bankrupt {William D. Miller} named in the schedule were notified of the time and place of this meeting, under the order of the court, by publication in the Erie Daily Republican, copies of which, containing the notice, were sent to each of the creditors, as well as to those who had proved their debts. Nineteen out of fifty-four of the

creditors have proved their debts, amounting in all to the sum of $9,030.95. All of these were present at this meeting, or duly represented by their attorneys, except the "Akron Stove Company," whose claim, as proved, is only twenty-five dollars. All the remaining twelve who have proved their debts, amounting to $9,005.95, vote in favor of dismissing the proceedings in bankruptcy, in compliance with the prayer of the petition. The claims of the creditors who have not proved their debts amount to about twenty thousand dollars. In view of the facts that the petitioning creditor, D. J. Crowell, the bankrupt, and all the creditors who have proved their debts (with the single exception above mentioned), desire the court to dismiss the proceedings, the register is of the opinion that it is expedient and proper that it should be done, provided it is lawful to do so. On this point the following is respectfully submitted to the honorable judge of the district court:

By SAMUEL E. WOODRUFF, Register: William D. Miller was duly adjudged a bankrupt on the 18th day of October, 1867, on petition of D. J. Crowell, one of his creditors. Twenty-four of his creditors petition the court to dismiss and supersede the whole proceedings. No assignee has yet been chosen. The bankrupt and the petitioning creditor, and all the other creditors who have proved their debts (save one who did not appear nor make any opposition, and whose debt only amounts to twenty-five dollars), join in asking the court to grant the prayer of the petition. Has the judge of the district court the power to do so?

Two learned attorneys appeared before the register, in support of the affirmative of this proposition, but they furnished no authority or law bearing on the point, and base their arguments upon the general power of common law courts to dismiss proceedings upon the application of the parties. The proceedings in bankruptcy are sui generis, and in absence of any

express enactment, it is proper to look to the general scope and spirit of the act of congress creating the jurisdiction. I am not aware that the question under consideration has been determined or even discussed in proceedings under the act of March 2, 1867 [14 Stat. 517]

In coming to the conclusion I have arrived at, I give much weight to the action of the creditors who have proved their debts, at the meeting above referred to. At that meeting they decided that, in their opinion, it was best for all concerned that the proceedings should be discontinued—nemo contradicente. The act gives large powers in the premises to these meetings of creditors. When presided over by the register it calls them "courts of bankraptcy." Sections 11, 12. It authorizes a majority in number and value of such creditors to elect assignees (section 13), to remove an assignee by a similar vote (section 18), to determine the amount of dividends (section 27). Three fourths in value of them may supersede the proceedings by arrangement, and commit the whole estate of the bankrupt to trustees, who shall settle the estate under their direction (section 43), in which event the whole matter is taken out of the hands of the court, except as its aid is invoked by the creditors. The creditors who do not prove their debts are not allowed to have a voice in any of the proceedings, or to participate in the funds. The policy of the act is to have the estate disposed of in such manner as the proving creditors shall determine is for their interest. In the present case they have determined that their interests will be best promoted by allowing the bankrupt to resume the possession of his estate, and to continue business. The register is of the opinion that the court has power to grant their request. There are some decisions under the bankrupt laws that have a bearing upon this point. In Cullen's Bankrupt Laws (440) it is said: "The only case in which any express provision by statute has

been made for superseding a commission is that of a petitioning creditor compounding his debts with the bankrupt; but the lord chancellor has always exercised a discretion of this kind whenever the ends of justice required, either for the sake of the creditors or of the bankrupt himself, that a commission should not be suffered to proceed." Hill Bankr. (2d Ed.) 406: "A district judge derives the power to supersede a commission of bankruptcy from the bankrupt law, by construction and implication." Morris's Estate [Case No. 9,825], cited Hill. Bankr. 407. "A supersedeas lawfully ordered places the bankrupt and his estate in the same situation they would have been in if the commission had never existed." Id. 407.

For the foregoing reasons the register is 297 of the opinion that it is both expedient, and legal, that a decree be entered by the court, directing the whole proceedings in this matter to be dismissed, vacated, and annulled; and that the marshal, as messenger, be directed to render up to the said William D. Miller, all property in his possession by virtue of the warrant of seizure, upon the payment by the said William D. Miller, of all costs of the proceedings.

MCCANDLESS, District Judge. The decision of the register is affirmed.

[1] [Reprinted from 1 N. B. R. 410 (Quarto 105), by permission. 1 Am. Law T. Rep. Bankr. 121, contains only a partial report.]