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Case No. 9,729.

IN RE MONTGOMERY.

{3 Ben. 566;[1] 3 N. B. R. 423 (Quarto, 108).}

District Court, S. D. New York. Dec. 11, 1869.

BANKRUPTCY—PROOF OF CLAIM—MOTION FOE LEAVE TO AMEND—CONTROL OF COURT THEREOVER.

Where a creditor filed a proof of debt on May 28th, 1869, and in the following October was examined by the assignee, and then applied to amend his proof of debt: *Held,* that his application should be granted.

{See In re Parkes, Case No. 10,754.}

{This case was formerly heard upon application of bankrupt's attorney to be paid counsel fees. Allowed. Case No. 9,726. It was afterwards heard upon motion of assignee to strike out claim of Baldwin Griffin, a preferred creditor, who had surrendered his preference. Motion allowed. Id. 9,728.}

[2] {By THEODORE B. GATES, Register: James B. Olney, one of the creditors of the above-named bankrupt {Henry B. Montgomery}, proved his debt against said bankrupt, individually, on the 28th day of May, 1869, at the sum of two hundred and twenty-five dollars; 621 and he also proved, at the same time, a debt of the same amount against said bankrupt, as a member of the late firm of Montgomery & Sage. On the application of the assignee in this matter, an order had been granted requiring the said James B. Olney to appear before the undersigned on or about the 6th day of October last past, and submit to an examination in regard to his said claim. Sundry other creditors were also ordered to appear at the same time and be examined as to their several claims. The said James B. Olney was in attendance as solicitor of one or more of such creditors, and the proceedings were, from time to time, adjourned until the day above-named,

before the case of said James B. Olney was taken up. Said Olney was then examined by the solicitor for the assignee on his own claim, and moved upon his own evidence, and upon an affidavit, for leave to amend his proof of claim. This was objected to by the solicitor for the assignee upon the grounds: First. It is too late. The original proof of claim having been made on the 28th day of May, 1869, and no application for amendment having heretofore been made. Second. Also upon the ground that an order upon him to testify in regard to this claim having been made prior to the 6th day of October, 1869, and there having been two or more meetings since that time, and no application having been made prior to this time, it is now too late for the register to entertain the motion to amend, and especially after testimony has been given in the case. I respectfully submit the question thus presented for the decision of his honor the district judge.

{I think the amendments should be allowed if amendments of proofs of debts are permissible under the bankrupt law {of 1867 (14 Stat. 517)}. Section 22 regulates the mode of proving debts, and provides that the court may, on application of the assignee, or any creditor, or of the bankrupt, or on its own motion, examine the bankrupt upon oath, or any person tendering, or who has made proof of claims concerning the debt sought to be proved, and shall reject all claims not duly proved, etc. Under this section it has been held that the court has, at all times, full control of all proofs of debts and the right to entertain objections to the validity of the debts or the proofs thereof. In re Patterson {Case No. 10,815}; In re Jones {Id. 7,447}. It is the policy and purpose of the law to do equal and exact justice between the estate of the bankrupt and creditors, and this provision should be construed to confer upon the court ample power to investigate a claim at any stage of the proceedings, and to make any correction equity and justice demand;

not only to reduce the amount if it is too large, but also to increase it if, through inadvertence, it is smaller than by right it should be. Questions of amendment address themselves to the equitable consideration of the court, and great discretion is exercised in disposing of them. In Re Brand {Id. 1,809}, it was held that a creditor who had inadvertently prejudiced his rights by making proof in an improper form, should be allowed to withdraw it, and amend or resubmit it in proper form. See section 1, Bankrupt Act. When proof is defective, a party will not only be allowed, but will be required, to amend it. In re Lowere {Case No. 8,577}; In re Myrick {Id. 9,999}. I think, therefore, an order should be entered in this matter, allowing the creditor to file supplemental proof of claim corresponding with the facts set forth in his affidavit.}[3]

BLATCHFORD, District Judge. The decision of the register is correct.

{NOTE. This case was subsequently heard upon motion of assignee to strike out Jonathan B. Cowles' proof of debt. Case No. 9,730. The priorities of creditors were determined in Case No. 9,727. It was again heard upon application of Thomas Montgomery to be allowed to file amended proof of claim. Id. 9,731.}

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

[2] {From 3 N. B. R. 423 (Quarto, 108).}

[3] {From 3 N. B. R. 423 (Quarto, 108).}

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