

## IN RE PITT ET AL.

{8 Ben. 389; 14 N. B. E. 59; 23 Pittsb. Leg. J. 196.}<sup>1</sup>

District Court, E. D. New York. Feb., 1876.

## BANKRUPTCY—AMENDMENT OF PETITION.

A petition in bankruptcy against a firm, naming only two partners of the firm and omitting the third member, cannot be amended so as to make the third member a party, after all the testimony has been taken and the cause is before the court upon hearing; and upon a petition so defective, the firm cannot be adjudicated bankrupts.

{In the matter of Charles S. Pitt and Alfred Pitt, bankrupts.}

Thomas M. Wheeler, for petitioning creditors.

Miller & Van Valkenburgh, for bankrupts.

BENEDICT, District Judge. The subsisting firm of Pitt Brothers, sought to be adjudicated bankrupt by these proceedings, is composed of Charles S. Pitt, Alfred Pitt, and Walter Pitt. But the proceeding has been taken against Charles S. Pitt and Alfred Pitt Alone, Walter Pitt not being made a party. Upon such a petition the existing firm of Pitt Brothers cannot be adjudged bankrupts, because all the persons comprising the firm Are not before the court.

The defect cannot be cured by an amendment made at this time, when all the testimony has been taken and the cause is before the court upon hearing. The application to Amend should have been made when the defect was discovered and before taking the proofs of the act of bankruptcy.

<sup>1</sup> [Reported by Robert D. Benedict, Esq., and Benj. Lincoln Benedict, Esq., and here reprinted by permission. 23 Pittsb. Leg. J. 196, contains only a partial report.]

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