

IN RE SARGENT.

{13 N. B. R. 144;¹ 1 N. Y. Wkly. Dig. 435.}

District Court, N. D. Ohio.

Dec., 1875.

BANKRUPTCY—PETITION—RIGHT OF CREDITOR
TO WITHDRAW—AGENT—REFERENCE TO
REGISTER.

1. A creditor who has in good faith joined in an involuntary petition cannot withdraw.
- {Cited in Re Western Sav. & T. Co., Case No. 17,442; Re Sheffer, Id. 12,742.}
- {Cited in Re Hawkes, 70 Me. 215.}
2. If a creditor was induced to join an involuntary petition by misrepresentation, he may be allowed to withdraw at any time before adjudication.
3. An affidavit to an involuntary petition may be amended.
4. A creditor who has joined in an involuntary petition cannot afterwards object to an amendment thereof, which is necessary to the prosecution of the same to final effect.
5. If an agent verifies a petition or deposition, he must show his authority.
6. Where a question is made as to whether a sufficient number of creditors have joined in an involuntary petition, the case may be referred to a register or commissioner to examine the proofs and report thereon.

{In the matter of Edward Sargent, a bankrupt.}

WELKER, District Judge. Held: First That where creditors in good faith join in petition in bankruptcy, they cannot afterwards withdraw so as to leave a less number and amount of the creditors than is required by law, and deprive the court of jurisdiction as to the matter of adjudication.

Second. That where assent to join in petition is obtained by misrepresentation or misunderstanding by the creditor, upon the same being shown to the court, such creditor will be allowed to withdraw at any time before adjudication.

Third. That the affidavit to the petition being defective in form, it may, on motion, be amended so as to conform to law.

Fourth. That a creditor who has in good faith joined in the petition, cannot afterwards object to amendments thereof which appear necessary to the prosecution of the same to final effect

Fifth. That where an attorney verifies the petition, the affidavit thereto, or other proof, he must show his authority for making such verification.

Sixth. That where a question is made as to whether a sufficient number and amount of creditors have joined in the petition, it is proper and the better practice to refer to a register or United States commissioner to examine the proofs, and report whether the required number and amount have joined therein.

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