

## IN RE SELIG.

{1 N. B. R. 186;<sup>1</sup> Bankr. Reg. Supp. 40; 6 Int. Rev. Rec. 206.}

District Court, E. D. New York.          Nov. 28, 1867.

BANKRUPTCY—DISCHARGE—EXAMINATION      OF  
BANKRUPT'S WIFE—GOOD FAITH.

Where an assignee, who was also a creditor, neglected to make his report on the return day of the order to show cause why bankrupt should not be discharged, but subsequently appeared before the register and applied for an order for examination of bankrupt's wife: *Held*, that such order should be refused, as it did not appear to have been made in good faith.

{In the matter of Moses Selig, a bankrupt.}

By DAVID C. WINSLOW, Register:

I, David C. Winslow, one of the registers of said court in bankruptcy, do hereby certify, that in the course of the proceedings in said cause before me, the following question arose pertinent to the said proceedings, and was stated and agreed to by the counsel for the opposing parties, to wit: George Wilcox, for the assignee, and Benedict & Boardman, who appeared for the bankrupt. The usual order was made by me for creditors and others to show cause before me, on the 18th of November, at ten a. m., why the bankrupt should not be discharged from his debts, and for second and third meetings of creditors. Notice was served upon Stephen Hyatt, who was both a creditor and assignee, by the clerk, as appears by his certificate. On the return day the bankrupt appeared with his attorney, and moved for a certificate to the effect that he was entitled to a discharge, which was granted upon producing the affidavit of the assignee, per form 35. The assignee had not filed his report, and his attorney, S. A. Underhill, was requested by the register and the attorney for the bankrupt to call

upon him for that return, which he did on that day, but the assignee refused to make the return. On the 19th an order was made requiring the assignee to make his return to show cause before me on the 21st, at one p. m. Previous to that hour, but on the same day, Mr. George Wilcox, on behalf of the assignee, applied, upon affidavit of the assignee, for an order for the examination of the bankrupt's wife, which I then denied, with liberty to apply at one p. m., the hour fixed for the assignee to make his return or show cause. At that hour the assignee renewed his motion for an order to examine the bankrupt's wife, and at the same time filed the assignee's return as required by law. The attorney for the bankrupt objects to the granting of the order applied for, upon the ground that the application comes too late, the time to show cause, and for the second and third meetings of creditors, having been held on the 18th, and all the bankrupt's proceedings having been regular; there being no opposition at that time, he would have been entitled to a certificate from the register upon which a certificate of discharge would have been granted by the court, had the assignee performed his duty, and made his return at the proper time. That return not having been made, the register could not certify that all the proceedings were regular, and hence the bankrupt has been delayed in obtaining his discharge.

The bankrupt himself was examined upon the application of the assignee on the 22d of October last. I refuse to grant the order for 1036 the examination of the wife of the bankrupt upon the grounds: (1) The assignee is guilty of laches. Had he made his return at the proper time, the bankrupt would have obtained his discharge. The assignee cannot take advantage of his own wrong. He had actual notice, as a creditor, of the meeting referred to, and knew it was his duty as assignee to present his report at that time. Besides this, he was called upon by his attorney to make his report,

and refused to do so. (2) The examination of the wife of the bankrupt is not a matter of right. "She may be required to attend before the court for good cause shown." Section 26. I do not think good cause has been shown; on the contrary, I think the application is not made in good faith, but for the purpose of delaying the bankrupt in obtaining his discharge, to which he is clearly entitled as the matter now stands. He makes no excuse whatever for not making his return at the proper time, nor for not making this application at an earlier date. The affidavit upon which the application is made does not state a solitary fact, nothing but suspicion and belief. It must be borne in mind that the applicant is a creditor as well as assignee, and his zeal may not be altogether official. And the said parties requested that the same should be certified to the judge for his opinion thereon.

Dated at Brooklyn, November 22, 1867.

BENEDICT, District Judge. The decision of the register not to grant an order for the examination of the wife of the bankrupt upon the ground that the application was not made in good faith, but merely for delay, is confirmed.

<sup>1</sup> [Reprinted from 1 N. B. R. 186, by permission.]

This volume of American Law was transcribed for use  
on the Internet

through a contribution from [Google](#). 