

IN RE STOKES.

{1 N. B. R. 489 (Quarto, 130); 1 Am. Law T. Rep. Bankr. 122.}²

District Court, S. D. New York. April 17, 1868.

BANKRUPTCY—MOTION TO SET ASIDE
ASSIGNEE—BY WHOM HEARD—NOTICE.

A motion on the part of the bankrupt to set aside the appointment of assignee can only be entertained by the district judge upon notice, and not by the register.

{In the matter of Edward S. Stokes, a bankrupt.}

I, Edgar Ketchum, one of the registers in said court of 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: Mr. John Winslow who appeared for the bankrupt, and Mr. G. A. Seixas who appeared for Jenk Budlong, and Jenk Budlong & Co., creditors of the said bankrupt. These creditors attended on the 13th of March, the day fixed in the warrant for the first meeting of creditors, and duly proved, and filed proofs of their claims, and chose James Davis assignee, who was then appointed by the judge. The attorney for the bankrupt afterwards, and on the 19th of March, attended, supposing that to be the day for the first meeting of creditors, and then obtained the register's order for the creditors to show cause why the appointment of assignee should not be set aside, and the bankrupt be allowed to prove that he was not indebted to those creditors. The creditors showed cause and insisted that only the judge upon notice could entertain this motion, and upon hearing in open court, or after a reference to take the testimony, this application not being unopposed, and so not being chamber business, such as the register, under the rules

and orders, might hear and direct. I was of opinion that the objection on the part of the creditors was well taken, and the counsel for the bankrupt then asked to have the question certified to the court, and written points on both sides were afterwards filed, which I transmit with this paper.

BLATCHFORD, District Judge. The register is correct in his views. The clerk will certify this decision to the register, Edgar Ketchum, Esq.

² [Reprinted from 1 N. B. R. 489 (Quarto, 130), by permission. 1 Am. Law T. Rep. Bankr. 122, contains only a partial report.]

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