

Case No. 16,926.

IN RE VETTERLEIN ET AL.

[5 Ben. 7;¹ 4 N. B. R. 599 (Quarto, 194).]

District Court, S. D. New York.

Feb., 1871.

ORDER TO EXAMINE BANKRUPT.

An order was made by the register for the examination of one of the bankrupts. The order recited that it was made on the application of F. & Co., a party claiming to be interested in the estate, "and who have duly proved their debt herein." The bankrupt objected that the register had no power to make such an order, that the order should have been made only on a verified application in writing, and that the order did not purport to be "on the application of a creditor" who had proved his claim: *Held*, that the order was correct in form and was properly issued.

[Cited in Re Dole, Case No. 3,965.]

[In the matter of Theodore H. "Vetterlein and Bernhard T. Vetterlein, bankrupts.] In this case, the register granted an order for the examination of one of the bankrupts. The order recited that it was made on the application of Fatman & Co., "a party claiming to be interested in the estate of the said bankrupts, and who have duly proved their debt herein."

[I, Henry Wilder Allen, one of the registers of said court in bankruptcy, do hereby certify, that in the course of the proceedings in said matter before me, the following questions arose pertinent to the said proceedings, and were stated and agreed to by the counsel for the opposing parties, to wit: Mr. Ward, who appeared for the bankrupts, and Mr. Hill, who appeared for Fatman & Co., creditors of the said bankrupts. The bankrupt, Bernhard T. Vetterlein, appeared, but through his counsel, Mr. Ward, objected to being examined under the accompanying order for the reasons following: First, That the register has no authority to grant an order for the examination of a bankrupt, either by statute or rule. Second. That the order, if granted, as it recites on application, should have been on a verified application in writing. Third. That the order is on its face defective, in that it does not purport to be "on the application of a creditor who has proved his claim." And the said parties requested that the same should be certified to the judge for his opinion thereon.

[The register is of opinion that the order for examination referred to is correct in form and properly issued. The second objection to the order is disposed of in the Case of Solis [Case No. 13,165]. The third objection has no force because the order recites that the parties upon whose application it was issued have duly proved their debt.]²

BLATCHFORD, District Judge. The register is correct in his views. As to the first objection, see In re Brandt [Cases Nos. 1,812 and 1,813]. As to the second objection, see In re Solis [Case No. 13,165]. The third objection is frivolous.

[See Cases Nos. 16,927-16,929.]

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

² [From 4 N. B. R. 599 (Quarto, 194).]