

Case No. 17,619.

IN RE WIELARSKI.

[4 Ben. 468;¹ 4 N. B. R. 390 (Quarto, 130).]

District Court, S. D. New York.

Jan., 1871.

BANKRUPTCY—PENDENCY OF PREVIOUS PROCEEDINGS—STAY.

If a bankrupt files two petitions, setting forth the same debts, and the first one is still pending, proceedings under the second one will be stayed.

[Cited in *Be Flanagan*, Case No. 4,850.]

In December, 1868, the bankrupt [Jacob Wielarski] filed his petition, and was adjudged a bankrupt, and an assignee was appointed. That proceeding being still pending, the bankrupt filed another petition, in December, 1870, setting forth the same debts, which was referred to a different register. At the first meeting of creditors, a creditor appeared and objected to any action during the pendency of the previous proceedings. The register was of the opinion that the objection was well taken, and certified the question to the court, as follows:

[I, Edgar Ketchum, 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: Mr. J. P. Solomon, who appeared for the bankrupt, and Mr. Henry Brash, who appeared in person, as one of the creditors of the said bankrupt. The bankrupt, in December, 1868, filed in this court his petition in bankruptcy, and it was referred to Mr. Register Allen, who made adjudication thereon, and issued his warrant for the first meeting of creditors, which was held, and at which an assignee was appointed. The matter of said petition is still pending, without any discharge or discontinuance, and, while so pending, the bankrupt filed his petition in this matter in December, 1870, and the same debts are set forth and the same creditors named in both petitions. Mr. Brash, now attending the first meeting of creditors in this matter before me, objects to proceeding for a choice of assignee herein, during the pendency of the former petition, on the ground of irregularity, which he insists the court will not allow, and I am of opinion that his objection is well taken.]²

BLATCHFORD, District Judge. The register is correct in his view. The clerk will enter an order staying further proceedings in this matter until the further order of the court. If any good reason exists for going on with the proceedings in this matter, it may be shown to the court.

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

² [From 4 N. B. R. 390 (Quarto, 130).]