

IN RE WINSHIP.

Case No. 17,878.
[7 Ben. 194.]¹

District Court, S. D. New York.

March, 1874.

REFUSAL OF BANKRUPT TO TESTIFY—PROTEST BY
COUNSEL—CONTEMPT—COSTS.

1. A bankrupt was summoned, at the instance of a creditor who had proved his claim, to appear before the register to be examined. He appeared, but, under the advice of counsel, refused to be sworn and examined, on the ground that he was advised that the said creditor had no valid claim, and was not a creditor within the meaning of the act. The counsel for other creditors also protested against his examination. *Held*, that no legal invalidity of the creditor's claim being proved, the bankrupt could not refuse to be sworn and examined.
2. Counsel for other creditors had no legal right to interpose.
3. As the bankrupt had acted under advice of counsel, he ought not to be punished for contempt, nor to be required to pay costs other than those of the certificate.
4. The protesting creditors ought to pay the costs occasioned by their action.

Edwin K. Winship, a bankrupt, being required to testify before the register in the matter of his bankruptcy, before the election of an assignee, at the instance of Eseher, a creditor whose claim, though proved, he intended to dispute as invalid for usury, refused to testify; and the counsel for 14 other creditors also interposed an objection to the examination of the bankrupt

The register, upon request of the bankrupt, certified to the court his conclusions upon the questions arising, viz., that, inasmuch as no legal proof existed of the invalidity of Escher's claim, and such claim had been duly proved, the bankrupt should submit to the examination; that the counsel for the other creditors had no right to interpose any objection; that, as the bankrupt had acted under the advice of counsel, he ought not to pay costs other than those of the certificate which he demanded; but that the protesting creditors ought to pay the costs occasioned by their action.

BLATCHFORD, District Judge. I concur in the views of the register.

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