

Case No. 18,044.

[30 Leg. Int. 361.]¹

IN RE WORK ET AL.

Circuit Court, W. D. Pennsylvania.

May 12, 1873.

BANKRUPTCY PROCEEDING—REVIEW BY CIRCUIT COURT—DISSOLUTION OF FIRM—SUBSEQUENT BANKRUPTCY OF PARTNER.

1. Revisory jurisdiction of the circuit court, under the second section of the act of March 2, 1867 [14 Stat. 517], over the proceedings in bankruptcy in the district court. Within what time relief must be sought.
2. The 36th section of the same act only applies to partnerships existing at the time of petition filed. Where a partnership had dissolved, made a general assignment in trust for creditors, the members residing in different districts, and more than a year afterwards, one of the partners filed his individual petition in bankruptcy, praying an adjudication of bankruptcy, against himself and his late copartners, no partnership assets appearing upon the schedules. *Held*, that this was not a case for a joint proceeding, as though the copartnership still continued.

[In review of the action of the district court of the United States for the Western district of Pennsylvania.]

In bankruptcy. The copartnership of Work, McCouch & Co., of the city of Philadelphia, bankers and brokers, consisting of Samuel Work and William McCouch, of said city, in the Eastern district of Pennsylvania, and Allen Kramer, Florence Kramer, and Edward Rahm, of the city of Pittsburgh, in the Western district of the same state, failed in the month of May, 1866, heavily indebted; on the 9th day of June, 1866, the partners in Pittsburgh made a general assignment of their copartnership and individual property in trust for their creditors, to one Thomas Moore, and on the 14th day of the same month, the partners in Philadelphia executed a similar deed to George Sergeant, Esq. On the 25th day of July, 1867, Florence Kramer filed his petition in the district court of the United States for the Western district of Pennsylvania, in bankruptcy, praying that himself and his copartners in the firm of Work, McCouch & Co. might be adjudged bankrupts. No partnership assets appeared in the schedules annexed. His copartners appeared upon the orders to show cause, submitted to an adjudication of bankruptcy, and the matter was so proceeded in that Florence Kramer obtained a discharge from his debts on July 3, 1868, and Edward Rahm, Samuel Work and William McCouch obtained theirs on December 23d, of the same year. Allen Kramer died without having applied for a discharge. On September 5, 1870, Henry W. Hook, a creditor to the amount of \$30,200, who had unsuccessfully resisted the discharge of the said bankrupts in the district court, presented his petition under the second section of the act of March 2, 1867, to the circuit court, setting forth the foregoing facts, and praying that the discharges granted to the said bankrupts might be annulled. The court allowed said petition to be filed and ordered the bankrupts to appear and plead answer or demurrer thereto in thirty days. To this petition a special

demurrer-was filed, raising the question of the application being in time, and also meeting the case made by it upon its legal merits.

Nathan H. Sharpless and D. O. Watson, for petitioner. (1) That the petition was filed in time. The cases under this section holding that it need not be filed within the ten days allowed for an appeal from the district to the circuit court (In re Alexander [Case No. 160]), but that it must be filed within a reasonable time. Upon the question of what is a reasonable time in this case, the act itself furnishes an analogy in the 34th section, allowing the creditor two years in the district court to contest the validity of his debtor's discharge. (2) The proceedings in the district court were entirely irregular, and so far as Samuel Work and William McCouch were concerned, without jurisdiction. At the best they can only be supported as individual proceedings on behalf of Florence Kramer. The 36th section of the act under which they were had, only applies to partnerships existing at the time of petition filed, or at all events to those where there are partnership assets to surrender to the assignee in bankruptcy. The words of the act are, "where two or more persons who are partners in trade shall be adjudged bankrupts," &c. Here the firm had been dissolved more than a year when the petition in bankruptcy was filed. The two assignments to Messrs. Moore and Sergeant worked a dissolution of the copartnership by operation of law. *Moddewell v. Keever*, 8 Watts & S. 63; *Cochran v. Perry*, Id. 262; *Horton's Appeal*, 1 Harris [13 Pa. St.] 67.

Upon the making of the assignments all dealings of the copartnership ceased, and at the time of the petition filed in bankruptcy, there were no assets of the firm to be administered in that forum. Under the circumstances, the joint proceeding was unwarranted by the act of congress, and as to Messrs. Work and McCouch, the bankrupt court was without jurisdiction over their persons, and acquired none by reason of their relations to the subject matter of the proceedings before it on the petition of Florence Kramer. Citing *Bump*, Law & Prac. Bankr. p. 53 et seq.; *In re Crockett* [Case No. 3,402]; *In re Penn* [Id. 10,927]; *In re Winkens* [Id. 17,875].

Hopkins & Lazear (with whom were John C. Bullitt and Samuel Dickson, for Work & McCouch) contra.

Before MCKENNA, Circuit Judge, and MCCANDLESS, District Judge.

The court, after consideration by MCKENNA, Circuit Judge, delivered a verbal opinion, and directed the entry of the following decree. "And now, May 12th, 1873, the demurrer

YesWeScan: The FEDERAL CASES

and bill of review having been argued by counsel pro and con, and duly considered by the court, the demurrer is overruled and the decree of the district court is reversed as to Edward Rahm, Samuel Work, and William McCouch.

¹ [Reprinted by permission.]