

IN RE BECK.¹

Circuit Court, W. D. Texas.

February, 1887.

BANKRUPTCY—REVIEW.

Neither the statutes, nor the orders in bankruptcy, nor the rules of the circuit court, prescribe specific delay within which an application for a review must be made, but the adjudged cases declare that the delay must not be unreasonable, nor operate to the prejudice of the parties in interest.

On Petition for Review in Bankruptcy.

PARDEE, J. October 13, 1881, Beck filed his petition for a discharge, and a hearing was ordered. Opposition was made on the twenty-fourth of the same October, to which opposition a demurrer and exceptions were filed January 28, 1882. Two years after this, January 28, 1884 the

demurrer and exceptions were sustained, and Beck's petition was referred back to the register for a certificate of conformity. September 17, 1885, the matter seems to have next come before the court, on the opposition of Sampson Heidenheimer, and on his motion; and an order was thereupon entered, denying Beck's application for a discharge on the grounds that Beck was a voluntary bankrupt, and that his assets were not equal to 30 per cent, of his debts; nor had one-fourth in number and one-third in value of his creditors consented. On the following twenty-first of June, 1886, Beck filed a petition to reinstate the case, and for a hearing of his petition for discharge. To this petition a demurrer and exceptions were filed, which, on hearing, August 3d following, were sustained, and the petition for reinstatement dismissed.

It may be noticed that, between the time of the judgment denying the discharge and the filing of the petition for reinstatement, one entire term of the district court had intervened, and no definite reason for the long delay was given. Failing to get a reinstatement in the district court, the bankrupt has petitioned the circuit court to review all the proceedings in the case. The last application to the district court was one wholly addressed to its discretion, and seems to have been refused because the court doubted its power to act after such long delay, and the intervention of another term of court; but, however that may be, the action on this application is not reviewable in the circuit court. See *In re Adler*, 2 Woods, 571. The decree of September 17, 1885, denying the discharge, was the final disposition of the matter, and if the petitioner has the right to a review in the circuit court it dates from that time. Neither the statute, nor the orders in bankruptcy, nor the rules of the circuit court, prescribe specific delay within which an application for a review must be made; but the adjudged cases declare that the delay must not be unreasonable, nor operate to the prejudice of the parties in interest. See *Littlefield v. Delaware & H. Canal Co.*, 4 N. B. R. 258; *Bank v. Cooper*, 20 Wall. 171; *In re Sutherland*, 2 Biss. 405; *Thames v. Miller*, 2 Woods, 564; and see these latter cases as to what is an unreasonable delay.

The delay in the present case has been nine months before aid was sought from the district court, and eleven months before application for review was made to the circuit court. No satisfactory showing is made for this delay. It is true that in the petition for reinstatement, addressed to the district court, is the statement that petitioner did not know of the decree complained of until long after, but there is no definite statement as to when he did first learn of it. In the petition for review no excuse whatever is given for the delay. The said delay was unreasonable.

It is therefore concluded in this case that the application for the review of the proceedings in the said bankruptcy cannot be entertained, so far as the petition for reinstatement addressed to the district court is concerned, because the action thereon was in the discretion of the district court, and is not reviewable, nor so far as the order or decree, denying

the bankrupt's discharge is concerned, because, as to that order, the application comes to the circuit court unreasonably late. This last conclusion

In re BECK.¹

is reached with the less trouble, as the proceedings of the applicant, from the first application for a discharge to the last petition, as shown in the petition for review, were dilatory, and well calculated (if not actually intended) to wear out the patience of his creditors.

The said petition for review will be dismissed, with costs.

¹ Reported by Joseph P. Hornor, Esq., of the New Orleans bar.