

In re JEHU et al.

(District Court, N. D. Iowa. June 13, 1899.)

1. BANKRUPTCY—VOLUNTARY PETITION—OPPOSITION BY CREDITORS.

The bankruptcy act of 1898 does not authorize creditors of a proposed voluntary bankrupt to file answers in opposition to his petition for adjudication.

2. SAME—EXAMINATION OF BANKRUPT—WHO ENTITLED TO DEMAND.

Any person who shows that he is actually a creditor of the bankrupt, by his being named as a creditor in the bankrupt's schedule, or by other evidence satisfactory to the referee, is entitled to an order for the examination of the bankrupt, although he has not formally proved his claim.

In Bankruptcy. Submitted on certificate from William A. Ladd, referee in bankruptcy.

Crim & Penn, for bankrupts.

J. G. Myerly and J. W. Corry, for creditors.

SHIRAS, District Judge. I know of no provision of the bankrupt act which authorizes creditors to file answers to a voluntary petition in bankruptcy, such as were filed in this case; and, viewing the papers in that light, the order of the referee is affirmed. On the other hand, I know of no provision of the bankrupt act which requires that a creditor must file and prove up his claim before he is entitled to an order for the examination of the bankrupt. Before granting an order for the examination of a bankrupt, the referee should be satisfied that the party applying for the order is in fact a creditor of the bankrupt; but, if this fact be shown, no good reason exists why the examination should not be had, even though the creditor may not have proved his claim in set form. Thus, in this case, if it appears that Kingman & Co. are named as creditors in the schedules attached to the petition in bankruptcy, I see no good purpose to be served in compelling them to go to the expense of proving up their claim, as a condition precedent to the exercise of their right to examine the bankrupt. In this case the schedules filed by the bankrupt do not disclose any assets, and so far no trustee has been appointed. Unless assets are discovered, no dividend will be made, and the creditors may properly decline to incur the expense of proving their claims until it appears that some good will result from so doing. If the purpose of the creditors who filed the answers stricken from the files was to obtain an order for the examination of the bankrupt, they should be accorded leave to renew the application in proper form, which may be done through an attorney appearing for them.

UNITED STATES v. MOREWOOD & CO.

(Circuit Court, S. D. New York. May 19, 1899.)

No. 2,667.

CUSTOMS DUTIES—APPRAISEMENT—RECALL FOR CORRECTION OF ERRORS.

Under article 1126 of the treasury regulations of 1892, after an appraisement has been completed, and a return thereof made to the importer, and accepted by him, the appraisement cannot be recalled, even for the correction of a clerical error, where the effect of such correction is to change the appraisal; and, if such action is taken, the importer has the right to protest against the second valuation on the ground that it amounts to a new appraisement, and is without jurisdiction, and is not bound to give notice of dissatisfaction, as provided in section 13 of the customs administrative act of 1890.

Appeal by the United States from a decision of the board of general appraisers, which reversed the action of the collector in the assessment of duty upon the merchandise in question.

H. P. Disbecker, Asst. U. S. Atty.
Arthur Sherer, for appellees.

TOWNSEND, District Judge. In this case four invoices of sugar were entered at the custom house and appraised, November 13, 1896. It appears that one of the clerks in the appraiser's office found that he had made a mistake in the final appraisal, and corrected two of the invoices before they left the appraiser's office. The four invoices were then returned to the collector, and the importer was notified of the appraisal, and wrote on the return: "All right. Accept." After this had been done, said appraiser remembered that he had forgotten to correct his former mistake as to two of the invoices, and he then recalled them from the collector, and changed the figures. The government contends that the effect of this action was merely to correct a clerical error, and not to make a new appraisal, and that, therefore, under article 1126 of the treasury regulations of 1892, and section 13 of the customs administrative act of 1890, the decision of the appraiser was final and conclusive as to the dutiable value of such merchandise against all parties interested therein, unless the importer, within two days thereafter, called for a new appraisal. Counsel for the importer contends that an unlawful duty was exacted upon said valuation, and that the recall of the invoices for the making of a new valuation thereon after the appraisement had been completed, and return thereof made to the importer, and accepted by him, was illegal and void, and in conflict with treasury regulations, which provide that such recall cannot be made for the purpose of changing the appraisal. The board of general appraisers has found that the change of value was a new appraisement, without lawful warrant, and void.

It is not clear from the evidence in this case exactly what kind of an error was made in the appraiser's office, but I concur in the decision of the board, because, assuming that the error was a clerical one,—which is not satisfactorily shown,—it seems to me that

under the provisions of article 1126 of the treasury regulations even the correction of a clerical error is not permitted where it amounts to a change in the appraisal. The importer thereupon had the right to protest against the second valuation by the appraiser on the ground that he (the appraiser) had no jurisdiction to recall the invoices, and make a reappraisal. I am not sufficiently familiar with the practice in these matters to feel certain as to the proper course to be pursued, but it seems to me that under section 13 of the customs administrative act of 1890 it is doubtful whether the importer could have taken advantage of this unauthorized act of the appraiser by notice, within two days after appraisement, of dissatisfaction, because this does not appear to be a question of dissatisfaction with an appraisal, but of jurisdiction to make a new appraisal.

The decision of the board of general appraisers is affirmed.

SCHOELLKOPF, HARTFORD & MACLAGAN, Limited, v. UNITED STATES.

(Circuit Court, S. D. New York. May 18, 1899.)

No. 2,493.

CUSTOMS DUTIES—CLASSIFICATION—CRUDE CARBOLIC ACID.

The article known commercially and popularly as crude carbohc acid, and used for manufacturing purposes, which is the first product of the distillation of coal tar, and contains, in addition to carbohc acid, many combinations of basic oils and bitumens, although not chemically an acid, is entitled to free entry under paragraph 473 of the tariff act of 1890 as an "acid used for manufacturing purposes," and is not dutiable under paragraph 19 as a preparation of coal tar.

Appeal by the importers from a decision of the board of general appraisers, which sustained the action of the collector of customs in assessing duties upon the importations in question.

Albert Comstock, for importers.

J. T. Van Rensselaer, Asst. U. S. Atty.

TOWNSEND, District Judge. The article in question is a crude product obtained from the distillation of coal tar, and was assessed for duty at 25 per cent. ad valorem, in accordance with the provisions of paragraph 76 of the act of 1890, as a product known as an oil. The importers protested, claiming that it was either free, as an acid used for manufacturing purposes, under paragraph 473 of said act, or dutiable at 20 per cent. ad valorem, as a "preparation of coal tar," under paragraph 19 of said act. In view of the decisions in *Matheson & Co. v. U. S.*, 18 C. C. A. 143, 71 Fed. 394, affirmed in 78 Fed. 810, and *U. S. v. Warren Chemical & Mfg. Co.*, 28 C. C. A. 500, 84 Fed. 638, it is admitted that the assessment of duty at 25 per cent. was wrong. The sole question herein is whether this product is free under paragraph 473. It is conceded that it is commercially known as crude carbohc acid, and that it