

a state of the case would change or affect the legal right of complainant to enforce payment of a certain proportion of the deficiency judgment, the court will, if desired, hereafter hear counsel upon the question.

Exceptions sustained.

IN THE MATTER OF KELLY, Bankrupt.

(District Court, D. Kentucky. June, 1880.)

1. BANKRUPTCY—PETITION FOR DISCHARGE—FAILURE TO PROSECUTE.

In Bankruptcy.

BARR, D. J. In this case Caleb Kelly filed his petition, to be adjudged a bankrupt, on the second of May, 1878, and was so adjudged on the tenth of May, 1878.

He reported some encumbered real estate and a little personal property, but all seems to have been set apart to him under the exemption laws.

The bankrupt filed his petition for a discharge February 15, 1879, and at the meeting some of his creditors opposed his discharge, and filed grounds why the discharge should not be granted. No further action seems to have been taken by the bankrupt. Berry, Jones & Hiter, creditors, who had proven their claims, filed a petition in this court October 8, 1879, asking to be allowed to pursue their legal remedies in the state courts against the bankrupt. This court, on an *ex parte* hearing of said petition, declined to enter such an order, but directed a rule to be issued against the bankrupt, returnable July 6, 1880, to show cause, if any he had, why he did not prosecute his cause and ask for his discharge.

The rule has been returned executed, and still the bankrupt has made no response, nor has he taken any further steps in his cause. I therefore direct the order to be entered:

In re Caleb Kelly, Bankrupt.

The bankrupt having failed to prosecute his cause with diligence, and failed to show cause why he does not prosecute

it and ask a discharge, it is adjudged that there has been unreasonable delay upon the part of the bankrupt in presenting his cause and asking for a discharge, and upon motion of Jones, Berry, and other creditors, it is now ordered that said creditors, and all others who have proven their debts against said bankrupt, have leave to prosecute any and all suits in law or equity they or either of them could have done had said Kelly never been adjudged a bankrupt. It further is ordered that said Jones and Berry, petitioning creditors herein, recover of said Caleb Kelly their costs expended herein, and may have execution therefor.

IN THE MATTER OF MARSHALL, Bankrupt.

(District Court, D. Kentucky. June, 1880.)

1. **BANKRUPTCY—DISCHARGE—REV. ST. § 5110.**—The discharge of a bankrupt is invalid under the eighth subsection of section 5110 of the Revised Statutes, where the consent of a creditor to such discharge was obtained by the father of the bankrupt, in consideration of a promise that such debt should be paid in full.

In Bankruptcy.

BARR, D. J. This case is submitted on the question of annulling the discharge granted bankrupt December 17, 1879. The bankrupt filed his petition to be adjudged a bankrupt in January, 1876, and he was so adjudged on the — day of January, 1876. He reported no assets except such as were afterwards set apart to him. He reported a list of creditors, ten (10) in number, amounting to \$2,455. Five of these creditors proved their debts, which amounted in the aggregate to over \$1,600, and S. E. Jones was elected assignee on the eighth of February, 1876, and accepted. Jones, on the nineteenth of April, 1879, filed his petition, setting out the fact that no assets had been received by him, and that the bankrupt had not applied for his discharge, and asking to be discharged from his trust. This was done. After this, on