

Case No. 458

ANONYMOUS.

[1 N. B. R. 216; Bankr. Reg. Supp. 46.]

District Court, S. D. New York.

BANKRUPTCY—WARRANT—SERVICE—ELECTION OF ASSIGNEE.

- [1. The direction in a warrant in bankruptcy for service “either by mail or personally” does not confer discretionary power upon the marshal, who must serve all by mail unless the warrant directs him to serve personally certain specified persons; but the register may strike from the warrant the words “either,” “or personally.”]
- [2. If but a single creditor proves his debt, and attends the first meeting of creditors, he is entitled to name the assignee.]

In bankruptcy. The district court of the southern district of New York has decided upon an application made to it under the provision of section 6 of the act, that the words in the warrant (form No. 6) “either by mail or personally.” do not confer upon the marshal any discretion as to the manner of service; but, on the other hand, it is the duty of the marshal to serve all by mail, unless directed in the warrant to serve personally certain parties therein specified by name; and that it is competent for the registers, in their discretion, to strike out the word “either” and the words “or personally” from the warrant.

On the return of the warrant, at the first meeting of the creditors, let the creditors who wish to have a voice in choosing an assignee, appear a few minutes before the hour designated for the meeting, and make proof of their respective debts. The registers are furnished with blanks for this purpose,

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which conform in size and shape to the other papers, and which can readily be filled up and sworn to. It will be observed that it is the majority in number and amount, who, at or before the first meeting, prove their debts, that are entitled to choose their assignee. So that it would appear if but a single creditor attend such a meeting and prove his debts, he is entitled to name the assignee.