

Case No. 3,427.

IN RE CROSS.

[16 N. B. R. 294;<sup>1</sup> 25 Pittsb. Leg J. 35; 5 Cent. Law J. 313.]

District Court, D. Indiana.

Sept. 25, 1877.

APPLICATION BY BANKRUPT FOR DISCHARGE.

The bankrupt must apply for his discharge before the final report and discharge of the assignee.

GRESHAM, District Judge. In this case the bankrupt filed his petition for discharge September 17, 1877. The assignee in the cause had rendered his final account, and received his discharge from the register November 1, 1876. The question in the case is made under the amendment to the bankrupt act approved July 26, 1876 (19 Stat. 102). That amendment provides that section 5108 of the Revised Statutes be amended to read as follows: "At any time after the expiration of six months from the adjudication of bankruptcy, or, if no debts have been proved against the bankrupt, or if no assets have come to the hands of the assignee, at any time after the expiration of sixty days, and before the final disposition of the cause, the bankrupt may apply to the court for a discharge from his debts." The amended provision is expressly extended to "all cases heretofore or hereafter commenced." The original provision on this subject, as in the section cited, differs from the amendment in this: Instead of the words, "before the final disposition of the cause," the original act reads in their stead, "within one year from the adjudication of bankruptcy." So that originally the bankrupt was required to apply for his discharge within a year after the adjudication, whereas, by the amendment he is required to apply "before the final disposition of the cause."

What is meant in this amendment by the final disposition of the cause cannot be a matter of doubt. But two principal objects are contemplated by a proceeding in bankruptcy: 1. The administration and distribution of a bankrupt's estate. 2. The discharge of a bankrupt from his debts. It is plain the amendment does not contemplate the latter as the final disposition of the cause, for that is the part of the case yet to be disposed of.

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The final settlement made by the assignee, and the discharge of that officer from his functions, constitute, within the meaning of this amendment, the final disposition of the bankruptcy. Under the act as it originally stood, this provision was variously interpreted. Congress, however, interposes to fix a new period, and declares that the bankrupt may ask for his discharge before the case is so disposed of, or, in other words, before the assignee has completed his administration and received his discharge. If any liberality of construction was indulged before this amendment, there seems to be no place for it now. Congress evidently intended to fix a limit within which a discharge could be asked for, and they very reasonably repealed the arbitrary limitation of one year, and substituted one not open to the objection that the estate remained unsettled—that is, that the period for applying for discharge must not be later than the final report and discharge of the assignee. Such, I think, is the only conclusion that can be reached, for it is the only one that gives any effect to the legislation of congress. This is substantially the view taken by the district court of the United States for the northern district of New York, and sustained on review by the circuit court for the same district, in *Re Brightman & Losee* [Case No. 1,878]. The application for discharge comes too late, and is therefore rejected.

<sup>1</sup> [Reprinted from 16 N. B. R. 294, by permission.]