

Case No. 3,982.

IN RE DONALDSON.

{2 Dill. 546;¹11 N. B. B. 460.}

Circuit Court, E. D. Missouri.

1873.

BANKRUPT ACT—DISCHARGE OF BANKRUPT—WHEN TO BE APPLIED FOR.

Under section 29 of the bankrupt act [of 1867 (14 Stat. 531)], where there are no assets, the district court may grant an application by the bankrupt for a discharge, although not applied for within a year, where the delay is satisfactorily excused.

{Cited in Re Lowenstein, Case No. 8,572; Re Watson, Id. 17,275.}

Petition for review, under section 2 of the bankrupt act, of an order of the district court refusing the bankrupt a discharge in a case where there were no assets.

Mason G. Smith, for petitioner for review.

Daniel Dillon, opposed.

DILLON, Circuit Judge. Petition for review, under section 2 of the bankrupt act, of an order of the district court [case unreported] refusing to grant the bankrupt a discharge because the application was not made within a year. I think the opinion of the district court, which accompanied the order under review, correctly construes section 29, as applied to all cases where some good reason is not shown why the application was not made within the year. The second petition by the bankrupt having been filed after the year, it ought to have stated the reasons for the delay, and these may be controverted. Where there has been no fraud on the part of the bankrupt, and his conduct is irreproachable, and no injury to creditors has resulted from the delay to make the application, it would be a hardship upon him to deny a discharge merely on the ground of a failure to ask for it within the year, or to apply rigorously an inflexible bar of one year to an application otherwise meritorious. Required in the exercise of supervisory jurisdiction to hear and determine the case "as a court of equity," I affirm the order under review; but on the payment of the costs by the bankrupt in connection with his application, the district court will give him leave, if he is so advised, to amend his petition for a discharge so as to present a case which, if equitable, will excuse the delay in not making the application within the year. Ordered accordingly.

¹ [Reported by Hon. John P. Dillon, Circuit Judge, and here reprinted by permission.]