

Case No. 5,118.

IN RE FRIEDLOB.

{19 N. B. R. 122;¹ 11 Chi. Leg. News, 189.}

District Court, W. D. Tennessee.

1879.

BANKRUPTCY—DISCHARGE OF DEBTOR—NOTICE OF APPLICATION—LOST RECORDS.

1. The loss of proofs of debt which have been filed is the misfortune of the bankrupt, and he cannot be legally discharged until they are supplied.
2. A creditor who has proved his debt is entitled to notice by mail of an application for a discharge, and he cannot be prejudiced by the loss of his proof from the files.
3. Where proof of debts have been lost a general notice of the meeting under the petition for discharge to all creditors named in the schedule, stating that if they have theretofore filed proof of debt, it will be necessary for them to supply it as it has been lost, is not sufficient Such lost records must be supplied under sections 899, 900, Rev. St.

In bankruptcy.

Before T. J. Lathan, Register:

On the 22d day of May, 1878, the creditors elected an assignee in said matter, to whom was delivered the proof of debts on file at that date. These, together with such as have come to his hands since his appointment, are so mislaid that he cannot find them, nor his book in which the same are entered. The only record to be had of the proven debts is that of those in hands of the undersigned, which is only partial. I may add that the number of debts proved is small, and the assignee reports no assets whatever. The bankrupt has filed his petition for discharge. Under section 3109, Rev. St., no creditors are required to be notified of the day to show cause, except such as have proved their debts; but in the case now certified, not having a perfect list, I am unable to know whom to notify. This difficulty, however, could be only obviated by giving notice to all the creditors in the schedule. But this would not remove another serious defect in the proceedings; the creditors who had previously filed their debts, on receiving the notice unless they desired to oppose the discharge for cause, would conclude it unnecessary to give the matter further attention.

It is useless to point out the inconsistent result that would follow. I respectfully recommend the following course: At the bottom of the usual notice of the meeting under the petition for discharge to let the following note be added: "If you have heretofore filed your proof of debt in this case, it will be necessary for you to supply it, as the same has been lost." And let these notices be sent to all the creditors named in the schedule.

I would further suggest that the time under

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these notices be five days longer than usual, viz.: fifteen days.

HAMMOND, District Judge. The course suggested by the register will not answer the purpose. It goes on the assumption that all the creditors of the bankrupt are, as a matter of fact, mentioned in his schedules, and notice to them will be notice by mail to all "who have proved their debts," as the statute requires. Rev. St. § 5109. Now it is possible that the bankrupt may have left off his schedules the name of some one or more of his creditors by misadventure, or it may be, designedly in the case of some creditor known to be hostile; and as some creditors of this land may have proved their debts, under the plan above suggested, they would receive no notice by mail. The statute (section 5109) provides for a publication of a notice of any application for discharge, which seems designed to protect the creditors against a discharge without notice; but this kind of notice will not bind a creditor who has proved his debt, nor can he be prejudiced by the loss of his proof from the files. Having proved his debt, he is entitled to notice by mail. The loss of these papers is the bankrupt's misfortune, and until they are supplied he can no more be legally discharged than he could be if other material points, or the whole of the record, were lost. Lost records are supplied in this court under the provisions of the Rev. St. §§ 899, 900. That the proofs of debt are a part of the record there can be no doubt. In re Emison [Case No. 4,459]; Anon. [Id. 460]. The clerk will certify this opinion to the register.

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