

Case No. 6,634.

IN RE HOLMES.

{14 N. B. R. 209;<sup>1</sup> 3 N. Y. Wkly. Dig. 101.}

District Court, D. Vermont.

May, 1876.

BANKRUPTCY—TIME OF DISCHARGE.

Where debts are proved and assets come into the hands of the assignees, the bankrupt need not apply for his discharge within one year from the adjudication of bankruptcy.

{In bankruptcy. In the matter of D. K. Holmes.}

SMALLEY, District Judge. This is an application for the bankrupt's discharge. It appears that the said Holmes was adjudged a bankrupt on the 2d day of September, 1873, and that assets came into the hands of the assignee and debts were proved against the bankrupt. It appears that the majority in number and amount of those who have proved their claims against the estate of the above-named bankrupt have signified in writing their consent that he may receive his discharge, and all the notices required by law and the rules of this court have been duly issued. The only objection now made to his discharge is, that the application was not made within one year after he was declared a bankrupt. The only question before the court now is, does it come within the limitation, as to time, of section 5108 of the bankrupt law? I am very clearly of the opinion that it does not; that section only applies to cases where no debts have been proved against the bankrupt, or no assets have come into the hands of the assignee. It is stated that this question has received a different construction in the Northern district of New York, but no such case has been shown me, and I cannot conceive any good reason for such limitation. It certainly seems to be the opinion of Judge Blatchford and the late Justice Nelson, in *Re Greenfield* [Case No. 5,775], that no such limitation exists as is claimed in this case, and, accordingly, I issue the discharge.

HOLMES, In re. See Case No. 13,183.

<sup>1</sup> [Reprinted from 14 N. B. R. 209, by permission.]