

Case No. 6,747.

IN RE HOW.

{18 N. B. R. 565;¹ 11 Chi. Leg. News, 141.}

District Court, D. Massachusetts.

Jan. 6, 1879.

BANKRUPTCY—POWER OF COURT—ORDERS OF.

The bankrupt court has power to order a bankrupt to pay over to the assignee sums which, apparently, are in his hands.

[Cited in Re McKenna, 9 Fed. 29.]

In bankruptcy.

LOWELL, District Judge. This was a petition by the assignees in bankruptcy of Calvin How and Frank G. How, alleging that they have in their possession at the present time certain promissory notes and certain sums of money, which were part of their assets, and should have been paid over to the petitioners, and praying relief. The petition was referred to Mr. Sherman, the register having charge of the case, who has reported that the notes mentioned in the petition have been collected by Calvin How, and, upon the whole evidence, he finds in the hands of said Calvin, unaccounted for, the sum of four thousand nine hundred and ninety-five dollars and eighty-six cents, and in the hands of Frank G. How, in like manner, the sum of nine hundred dollars.

Upon a review of the evidence, I agree with the register that those sums are severally chargeable to the bankrupts as reported. It was agreed by both parties, as I understood, that the question whether the bankrupts had, in fact, lost or spent the money or part of it, since they received it, or since the bankruptcy, if received before, was not fully

In re HOW.

examined or intended to be examined by the register. And the argument before me did not touch the point of the power of the court to punish a bankrupt, actually poor; or how such power, if possessed, should be exercised; and whether anything like a poor debtor's oath could be administered to them. All that is asked at this time is an order on the bankrupts, severally, to pay over the sums which, apparently, are in their hands.

I have no doubt of the power of the court to pass such an order. A debtor who becomes bankrupt submits himself, or is by law submitted, to the summary jurisdiction of the court. It is not necessary that the assignee should sue him in order to obtain the assets. His position is somewhat like that of an attorney, or other officer of the court, or of an accountant of the court. The cases on this point are, I believe, entirely uniform. In re Dresser [Case No. 4,077]; In re Speyer [Id. 13,239]; In re Kempner [Id. 7,689]; In re Peltasohn [Id. 10,912]. The case of In re Salkey [Case Nos. 12,253 and 12,254] is also somewhat analogous to, though not identical with this, because that was a question of the disclosure required of a bankrupt.

I shall pass the order that the bankrupts pay to the assignees the sums found by the register to be due from them, respectively, in thirty days from this 6th January, 1879.

¹ [Reprinted from 18 N. B. R. 565, by permission.]