IN RE HOYT.

Case No. 6,806.

{3 N. B. R. (1870) 55 (Quarto, 13).}[1]

District Court, D. Massachusetts.

BANKRUPTCY—PAYMENT OF SURPLUS TO BANKRUPT—NO DEBTS PROVED—PROCEDURE.

The surplus funds in the hands of the assignee, after the settlement of the estate, where no debts have been proved, and there is reasonable cause to believe that none will be proved, are to be paid to the bankrupt upon the filing of a petition on oath by him, setting forth his reasons for believing that no creditors desire to prove their debts, and asking that the funds shall be paid to him.

{Cited in Re Smith, Case No. 12,989; Nicholas v. Murray, Id. 10,223.}

{Cited in Perry v. Lorillard Fire Ins. Co., 61 N. Y. 216; Page v. Waring, 76 N. Y. 473; King v. Remington, 36 Minn. 31, 29 N. W. 352.}

{In bankruptcy. In the matter of A. W. Hoyt.}

LOWELL, District Judge. The assignee in this case petitions for leave to transfer to the bankrupt the net assets in his hands, the case having been in court for a long time, and fully settled in the usual way, and no creditors having proved their debts, and there being good reason to believe that none intend to do so. The bankrupt was discharged more than a year ago. After the debts are paid, the assignee is a trustee for the bankrupt. Charman v. Charman, 14 Ves. 580. And the debts are those which have been duly proved to be such. The assignee is not an agent to pay the bankrupt's creditors against their will; and their will to be paid can be shown only by their acts in court. There are no creditors but such as prove their debts. The schedule may show that there are said to be

possible creditors, but the schedule may be mistaken, or all the schedule creditors may have security, as is said to be the case here; or they may have other reasons, satisfactory to themselves, for not wishing to prove their debts. Until they do prove, the assignee has no concern with them, excepting to see that they are notified, and have full information of the proceedings, and an opportunity to come in if they wish to do so. When this or a similar petition was first presented in this case, I postponed its consideration in order to make sure that such opportunity had been afforded. In the meantime there has appeared a summary of two cases, in which it is said to have been decided that the assignee, after paying in full the debts which have been proved, must apply the surplus to the payment of such as have not been proved. In re James {Case No. 7,175}; In re Haynes {Id. 6,269}. I apprehend there must be some mistake in the brief reports of these cases. What the learned judge insisted on must have been, I suppose, that non-proving creditors should he carefully warned and notified. There is no warrant in the statute for paying a dividend to such persons; on the contrary, all the sections upon the subject, expressly, or by necessary intendment, refer to creditors who have verified their debts in the mode required by law. In England, this matter is regulated by St. 12 & 13 Vict. c. 106, § 117; but the law is the same here, because by force of the assignment there is a resulting trust, after the express trusts have been fulfilled; and it is not any part of an assignee's trust to seek out and satisfy supposed creditors, who do not choose themselves to come forward. The bankrupt should file his petition on oath, showing his reasons to believe that no creditors desire to prove, and asking to have the fund paid out to him, and it will be granted.

[1] {Reported by permission.}