Case No. 9,878b.

IN RE MOTT.

{Betts, Scr. Bk. 83.}

District Court, S. D. New York. July, 1842.

BANKRUPTCY—RULES—DEBTS OF BANKRUPT—CONSIDERATION—ASSIGNMENT FOR THE BENEFIT OF CREDITORS.

{1. An order of court, accompanying the published rules and forms, providing that they shall govern proceedings in bankruptcy, requires that their substance shall be adhered to, rather than mere forms of expression.}

{2. A rule requiring petitions in bankruptcy to state the consideration or cause of indebtedness, as to the sums represented to be owing, is not violated by failure to state the consideration of a debt which has been converted into a judgment.}

{3. An allegation by a bankrupt that he had made an assignment for the benefit of his creditors some time before the date of his petition is not open to the objection that it fails to state what estate remains undisposed of, or that it fails to give the assignment itself, if accompanied by the sworn statement that the assigned property will not pay the debts it was conveyed to provide for.}

{In the matter of the petition of Jacob H. Mott to be decreed a bankrupt. Heard on objections to the petition.}

Before BETTS, District Judge.

Objections have been taken to the petition to be decreed bankrupt, because it is not in the form prescribed by the court, omitting the consideration or cause of indebtedness, as to various sums represented to be owing, and because it does not set forth the particulars of property assigned by the bankrupt in 1840 for the satisfaction of his then existing debts. The counsel for petitioner supposes the forms imposed by the court are not obligatory; and, if the court has such power to make them so, it has not exercised it in any notorious manner. The counsel is mistaken, as the published rules and forms are accompanied by

an order of this and the circuit court that they shall govern proceedings in bankruptcy. The court, however, is not tenacious of words and phrases, but requires that the substance shall be preserved and adhered to, whatever deviations there may be from mere form of expression. The court has decided that when a debt no longer rests upon the personal undertaking of a bankrupt, but is converted into a judgment, it is unnecessary to give any other consideration, a judgment imputing the highest one in the law. So much of the objections as apply to judgments are therefore overruled. There are, however, various other items defective in alleging only an indebtedness to individuals, without any distinct disclosure of the consideration or grounds of indebtedness. A further objection is that the bankrupt alleges that he made an assignment in 1840 of all his estate and effects for the payment of his debts, but has not designated what his estate is, its location, &c. The court, in numerous cases, has decided that it is incumbent on the bankrupt to apprise his creditors and assignee what estate remains undisposed of, in cases of trust conveyance, and that this must be done by giving the assignment itself. These were, however, in cases where there was a resulting trust to the debtor manifestly unextinguished. The present case differs from those in this: that the petition and schedule nowhere represent that there is any residuary interest, as reserved to the bankrupt, and it does not therefore fall within the terms of those previous. This objection, at least, is an exceedingly sharp one, for the bankrupt swears explicitly that the assigned property will not pay the debts it was conveyed to provide for. Had the creditors charged that this reason was studied and intentional, and that the bankrupt knew that there was a contingent interest to his own benefit accompanying the assignment, and established the allegation by proof, the question as to the effect of the statement in its present

form would be very different, for the matters of merit would be directly connected with the defect of form. This shows that the objections are all strictissimi juris. They involve no higher consideration than whether the petitioner has honestly and fully conformed to the forms prescribed by the court, and are undoubtedly well taken to the establishing a direction of that character. It is better that all parties should feel the necessity of adhering to an uniform course of practice, and that no deficiency or uncertainty of information to creditors should be encouraged in the framing of bankrupt papers, and therefore the court places this in the category of those where the party has made default in complying with the rules, and holds that the bankrupt cannot proceed on these papers without perfecting them by a proper amendment. This order, however, is not to carry any costs against the bankrupt.

{NOTE. Subsequently this case was heard upon an application to set aside the sale by the assignee to Isaac C. Delaplaine of the interest of the bankrupts in the estate of their grandfather John Hopper. The court allowed the petitioners to move the case into the circuit court. Case No. 9,878a. The conveyance was set aside in the circuit court. Id. 9,878. At a later date the administrator of Delaplaine petitioned 904 to have the amount paid by him refunded to them. Id. 9,879. There was another sale of this same interest at public auction in 1868, at which sale it was purchased by James M. Smith, Jr. A petition was filed to set aside this sale. The petition was dismissed. 6 Fed. 685.}