

Case No. 17,936.
[8 Ben. 237.]¹

IN RE WOOD.

District Court, S. D. New York.

Sept., 1875.

BANKRUPTCY—TIME OF APPLICATION FOR DISCHARGE.

1. W. was adjudged a bankrupt on March 2, 1868. His application for a discharge was not made till June 19, 1869. A debt was proved and assets came to the hands of the assignee. *Held* that, under the decision of the circuit court for the Northern district of New York, in *Be Sloan* [Case No. 12,945], the application was made too late, and that no discharge could be granted in the case.
2. All applications for discharge must be made within one year from the adjudication. Where no debts have been proved, or no assets have come to the hands of the assignee, the application may be made after the expiration of sixty days from the adjudication. Where debts have been proved, and assets have come to the hands of the assignee, the application may be made after, but not till after, the expiration of six months from the adjudication.

[In the matter of Edward T. Wood, a bankrupt.]

S. G. Courtney, for bankrupt.

BLATCHFORD, District Judge. The adjudication of bankruptcy in this case was made March 2, 1868. The application for a discharge was not made till June 19, 1869. Under the recent ruling of Mr. Justice Hunt (concurring with the opinion of Judge Wallace), in the case of *In re Sloan* [Case No.

12,945], in the Northern district of New York, the application was made too late, because not made within one year from the time of the adjudication. Mr. Justice Hunt says: "The authority to apply for a discharge rests entirely upon section 29. It must necessarily be taken with the limitations in that section contained. The only right to apply, there given, is to be exercised within one year from the time of the adjudication. In my judgment, this applies to all cases, whether there are debts proved, or assets received, or not. It is a case of limited authority, and there is no power to grant a discharge, unless it is applied for within the time prescribed. The excuse of the bankrupt for the delay is a reasonable one, and, if there was power, I should accept it as satisfactory." It has heretofore been the practice of this court to allow applications for discharge to be made after the expiration of one year from the adjudication of bankruptcy, in cases where the two circumstances concurred, that debts had been proved, and assets had come to the hands of the assignee, the construction given by this court to section 29 of the act [of 1867 (14 Stat 531)],—section 5108 of the Revised Statutes,—being, that the application within one year from the adjudication was required only where no debts had been proved or no assets had come to the hands of the assignee; that, where either of those circumstances existed, the application might be made at any time after the expiration of sixty days from the adjudication, and within one year from the adjudication; and that, where debts had been proved and assets had come to the hands of the assignee, a discharge might be applied for at any time after the expiration of six months from the adjudication, and even after the expiration of one year from the adjudication. In the present case a debt was proved, and assets had come to the hands of the assignee. Therefore, under the former rulings of this court, the application was in time, although not made until more than 15 months after the adjudication. But the decision in *Re Sloan* [supra], is that of the circuit court, in review of the decision of the district court, and is controlling on this court. It is to the effect that the proper interpretation of the statute is, that all applications for discharge must be made within one year from the adjudication; that, where no debts have been proved, or no assets have come to the hands of the assignee, the application may be made after the expiration of sixty days from the adjudication; and that, where debts have been proved, and assets have come to the hands of the assignee, the application may be made after, but not until after, the expiration of six months from the adjudication. Under this construction, no discharge can be granted in this case. The question is one of the power and jurisdiction of the court, and not one depending upon the opposition of a creditor.

¹ [Reported by Robert D. Benedict, Esq., and Benj. Lincoln Benedict Esq., and here reprinted by permission.]