

household and personal effects, but he boarded at a restaurant, and had furnished rooms elsewhere, in which he lodged. The trustee and referee have refused to set out a homestead as exempt in the tenement house, and this is a review of that proceeding. The opinion of the referee seems to well show that no part of the house was used or kept as a homestead by him, within the meaning of the statutes of the state on that subject, as construed by the supreme court of the state. Moreover, homesteads are given in this state only to housekeepers, or heads of families. The bankrupt does not appear to be either. He is a boarder, and does not keep house, and is not a housekeeper. He has no family using, or for which he is keeping, any of the premises, and is not the head of a family. Not but that a single man or woman, without relatives even, might be a housekeeper, or a head of a family, as to a homestead; but the ability to be such is not enough; the condition must exist. It did not as to the bankrupt. Decision affirmed.

In re BINGHAM.

(District Court, D. Vermont. May 30, 1899.)

BANKRUPTCY—SET-OFF OF CLAIMS—SUBROGATION.

Where, at the time of the filing of a petition in bankruptcy, the bankrupt and a person indebted to him were jointly liable on a promissory note to a bank, and the bank proved its claim on the note, and thereafter the bankrupt's debtor took up the note, *held*, that the latter could not set off against his indebtedness to the estate the moiety of the note which the bankrupt should have paid, but that, on paying his debt to the trustee, he should be subrogated to the rights of the bank as to that moiety, and entitled to receive such dividends as should be declared thereon.

In Bankruptcy.

Henry C. Ide, for trustee in bankruptcy.
Wendell P. Stafford, for James E. Hartshorn.

WHEELER, District Judge. At the time of the filing of the petition the bankrupt owed James E. Hartshorn \$110.50, Hartshorn owed the bankrupt \$554.70, and both were holden on a note of \$1,200 to a savings bank, one-half of which each ought to pay. The bank has proved its claim, and Hartshorn has taken up the note. One-half of what he paid was his own debt, and he can have no claim against the bankrupt estate growing out of that. He insists that the balance of direct claims between him and the bankrupt should be set off against what he has paid that the bankrupt ought to have paid, and that the balance should stand as a valid claim in his favor against the estate. The bankrupt was impliedly bound to save him harmless from this part of that debt, and has not done so; but the detriment has occurred since the filing of the petition, and, till that occurrence, Hartshorn had no provable claim on that account. By this bankrupt act all claims turn upon their status at the time of the filing of the petition, and decisions upon statutes having different provisions in this respect will not afford safe guides for the construc-

tion of this. It affords relief for a surety when the creditor does not prove the claim by allowing the surety to prove it for subrogation, but nothing more. The relief is the same that the surety would have if the creditor should prove the claim, and get what could be had upon it voluntarily. The creditor has no right to anything more than payment, and the surety who has borne the burden is entitled to the benefit. These rights arise, not from the original contract of suretyship, but from the equities of the subsequent transactions. *Miller v. Sawyer*, 29 Vt. 412. Subrogation of the surety to the rights of the creditor does not enlarge them. They extend only to such dividends as the creditor can have. Here, Hartshorn should pay the balance due between him and the bankrupt to the trustee, now, for administration; and the trustee should pay the dividends on the bankrupt's half of the note, when declared, to Hartshorn. One-half of bank claim to stand for benefit of Hartshorn. Hartshorn's claim merged in balance of \$444.20 due the estate.

In re JACKSON et al.

(District Court, D. Vermont. May 12, 1899.)

BANKRUPTCY—COLLECTION OF ASSETS.

Where a debtor of the bankrupt gave him a promissory note made payable to the order of a certain bank, but the same had not been indorsed by the bank, and no notice of any assignment of it had been given to the maker, and the trustee in bankruptcy could not find the note, *held*, that the bank should be restrained from indorsing the note, and that the debtor should not be permitted to set up the note against payment to the trustee of his indebtedness to the estate.

In Bankruptcy. On report of referee in bankruptcy.

George N. Dale, for trustee in bankruptcy.

Elisha May and J. W. Erwin, for certain creditors.

Porter Dale, for Dyer and Island Pond Nat. Bank.

WHEELER, District Judge. The report of the referee on the petition of the trustee shows that creditors, undertaking to reach assets of the estate held in some alleged fiduciary capacity by trustee process in the state courts, have stipulated to discontinue their suits. Questions as to such liabilities of bankrupts relate to the discharge, and not to the assets, or the right of the trustee to the assets, which this court seems to have jurisdiction to protect. The stipulations, if carried out, will avoid the necessity of any injunction to restrain these suits. The report shows that Dyer gave Jackson a note dated October 27, 1898, payable to the order of the Island Pond National Bank three months or ninety days from date, on partnership account, which the trustee cannot find, the bank has not indorsed, and no notice of any assignment of which given to Dyer appears, and that Dyer owes the bankrupt firm \$87, if the note is disregarded. It would not become negotiable paper as to others without indorsement by the bank, nor could it be effectively assigned as a chose in action without notice to Dyer, and could not