Case No. 4,704.

EX PARTE FAXON.
IN RE LAURIE ET AL.

{1 Lowell 404;[1] 4 N. B. R. 32 (Quarto, 7).}

District Court, D. Massachusetts. 1869.

BANKRUPTCY—LIABILITY OF ASSIGNEE FOR RENT.

1. If the assignee of a bankrupt elects to take a term belonging to the bankrupt under a lease, he must take with the burden of the accruing rent, and not merely with the obligation to pay from the time he begins to occupy.

[Cited in Re Dunham, Case No. 4,145; Re Hufnagel, Id. 6,837; Re McKenna, 9 Fed.

[Cited in Com. v. Franklin Ins. Co., 115 Mass. 282.]

2. Where a petition in invitum was filed by the creditors of a firm January 8, 1869, and they were adjudged bankrupts March 26, 1869, and the assignees occupied their store and paid rent therefor, for two or three months from that date, without any express stipulation concerning the quarter's rent which came due April 1, 1869; *held* the assignees were bound to pay that quarter's rent in full.

The bankrupts {Laurie, Blood & Hammond} hired a large and valuable shop of the petitioners, and paid the quarter's rent, which fell due January 1, 1869. On the eighth of that month a petition was field against them in bankruptcy, but was not pressed to an early trial, and the adjudication took place March 26, 1869. The assignees occupied the store for two or three months, and paid rent from March 26, but no arrangement was made between them and the petitioners concerning the rent from January 8 to that day, and the petitioners now applied to have it paid in full by the assignees. The case was submitted on facts agreed.

E. Avery & G. M. Hobbs, for petitioners.

B. F. Brooks, for assignees.

LOWELL, District Judge. An assignee in bankruptcy, unless restrained by the terms of the lease itself, may adopt or reject a

term, as he finds most beneficial for the creditors, and may take a reasonable time to decide the question. If he takes the lease he makes himself liable, on behalf of the estate, for the rent, including at least that of the current quarter, and this he must consider in determining whether to adopt the lease. The petitioners would have done more wisely, perhaps, to insist on this at the time, but I see no ground for saying they have waived any of their rights. In theory of law, the assignees have been in possession ever since the petition was filed, and not only from the date of the adjudication, which is merely a finding that the petition is well founded. If the quarter-day had come round, pending the petition, the bankrupt would have been authorized, if he found it necessary for the best interests of his creditors, to pay the rent in order to save an ejectment. I have more than once permitted this to be done. And the assignees, by the course they have taken, affirm this to be a case in which such a course was prudent and proper.

The only reported case which I have seen is very short, and gives no reasons or arguments, but the decision agrees with my opinion. There the assignees were required to pay rent from the date of the petition. In re Merrifield {Case No. 9,465}. I do not know that any question was raised in that case, to distinguish the date of the petition from that of the adjudication; but if an assignee is to pay only for his own occupancy, he must be charged from the date of the assignment. There is no argument which will make him liable from the adjudication that does not apply to the date of the petition, which is the true beginning of the proceedings, and the controlling date in all these matters. Petition granted.

[1] {Reported by Hon. John Lowell, LL. D., District Judge, and here reprinted by permission.}