

Case No. 4,997.  
[8 Ben. 421.]<sup>1</sup>

IN RE FOWLER ET AL.

District Court, S. D. New York.

May, 1876.

OCCUPATION OF REAL ESTATE BY ASSIGNEE IN BANKRUPTCY—RENT.

Bankrupts, at the time of their bankruptcy, were in the occupation of premises, on which were an engine and some rice-cleaning machinery. After the adjudication of bankruptcy, which was on December 23d, 1874, the assignee took possession of this property, which remained on the premises till November following, when it was sold by the assignee. The landlord then petitioned to be allowed for the use and occupation of the premises, and, on a reference to the register, he gave evidence to show that the fair rental value of the premises was \$600 a year, and claimed compensation at that rate. The assignee gave evidence that the value of the premises, as a store house for the property, was \$200. The register reported in favor of the payment of that sum by the assignee to the landlord, for the use and occupation of the premises: *Held*, that the estate in bankruptcy should make compensation for the use and occupation of the premises, to the extent that the estate had been benefited thereby, and that the report of the register should be confirmed.

This case came before the court on a petition by Moses S. Beach, owner of premises in Furman street, Brooklyn, to be paid for the use and occupation of those premises from the date of the adjudication, December 23d, 1874, to the following November. The matter being referred to the register, it appeared, by the evidence adduced before him, that, at the time of the adjudication, the premises were in the occupation of the bankrupts [Charles R. and Edward Fowler], in their business of dealing in rice, for cleaning rice, they having therein a large amount of machinery, and a steam engine which they used in their business; and that the assignee, on his appointment, took possession of the property, which remained in the premises till it was sold by the assignee in November, 1875, for \$1,000. The landlord gave evidence to show that the rental value of the premises was \$600 a year, and claimed to be paid at that rate. The assignee gave evidence that the value of the premises, as a store house for the machinery, was \$200. The register reported in favor of the payment of \$200 to the petitioner, and gave the following opinion: "The undersigned considers that the estate in bankruptcy of a bankrupt is not chargeable for the use and occupation of a store or other premises, unless the purposes of the estate require the use and occupation of such premises, and then that the compensation for such use and occupation is to be measured by their benefit and value to the estate. Where rent is in arrear, the landlord has it in his power, at any time, to put an end to the occupation of the premises by the bankrupt or by the marshal or assignee or other officer of the court. If he is dissatisfied with the prospect of an award of compensation for the use of his premises for the purposes of the estate in bankruptcy, he may generally have his remedy by summary proceedings, under the statute. At any rate, unless under an order of the court after the filing of the petition by or against the bankrupt, there cannot be a

contract, express or implied, to bind the estate of the bankrupt to pay rent, because the parties who are to pay rent, the creditors or others interested in the estate of the bankrupt, are not parties to the contract. The assignee in bankruptcy is not the agent of those parties to enter into any contract. The property of the estate of the bankrupts in the building for the use and occupation of which the claim against the estate of the bankrupts is made in the present case, produced, on the sale by the assignee, the sum of about one thousand dollars. The landlord asks from the estate of the bankrupts, for the use and occupation of his premises for the storage of this property, the sum of five hundred dollars. It is plain that it would be a reproach upon the administration of the law to allow fifty per cent of the value of the property of the bankrupts merely for taking care of it. If, by leaving property of the estate of the bankrupt on the premises, or by advertising the lease for sale, the assignee incurs a liability for rent, it is a personal liability, and, if there is a lease, the liability of the bankrupts, upon the covenants of the lease, for rent accruing after the filing of the petition, will not, it is believed, be discharged by his discharge in the proceedings in bankruptcy. It is right, however, that the estate in bankruptcy of the bankrupts should, to the extent that the estate has been benefitted by the use and occupation of the premises, make compensation for such use and occupation. Upon the evidence on this reference, the reasonable amount of such compensation, is, in the judgment of the undersigned, the sum of two hundred dollars. The undersigned has accordingly reported that sum as an allowance for such compensation.”

BLATCHFORD, District Judge. I concur in the foregoing opinion of the register.

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