IN RE HAY ET AL.

Case No. 6,253.

{2 Lowell, 180;[1] 7 N. B. R. 344.}

District Court, D. Massachusetts. Oct., 1872.

BANKRUPTCY—DESIGNATION OF MONET AS "NECESSARIES."

The assignee in bankruptcy may designate a sum of money as "necessaries," under section 14 of the act {of 1867 (14 Stat. 522)}.

{Cited in Re Thompson, Case No. 13,938.}

{In bankruptcy. In the matter of Ira Hay and others.}

A. V. Lynde, for bankrupt.

Boardman & Blodgett, for assignee.

LOWELL, District Judge. The question presented in this case is, whether the assignee has power to allow the bankrupt any part of a sum of money which was in the possession of the latter as his separate property when the joint petition was filed. Section 14 excepts from the operation of the assignment the necessary household and kitchen furniture, and such other articles and necessaries of such bankrupt as the assignee shall designate and set apart; having reference in the amount to the family, condition, and circumstances of the bankrupt, but altogether not to exceed in value, in any case, the sum of $500, &c. In Thornton's Case {Case No. 13,994}, arising in the Cape Fear district of North Carolina, it was held that money might be set apart. Brooks, J., considered the purpose of the law to be to furnish temporary support to honest bankrupts, whose property had been all surrendered to their assignee; and that this object would be defeated in some most meritorious cases, if money could not be considered a necessary. In two other cases the contrary has been held, on the ground, as I understand, that "articles arid necessaries" must be taken to refer to things ejusdem generis with household and kitchen furniture, such as fuel and provisions. In re Lawson {Id. 8,149}; In re Welch {Id. 17,366}.

I am of opinion that a fair construction of the act may include money as necessaries, for the reasons given by Judge Brooks. The law Intends to encourage a full disclosure and surrender of all property, and to provide for the immediate wants of the bankrupt, whether he happens to be a householder or not; and that an insolvent should by accident or design have acquired a full stock of necessary furniture, fuel, provisions, and the like, should put him in no better situation than one, with equal needs, who has not had equal foresight or good fortune. Considering the intent of the statute, I am of opinion that money necessary for the support of the bankrupt is within its terms. Under a statute giving the admiralty court jurisdiction of suits for necessaries supplied to a foreign ship, money lent to the master to buy necessary supplies has been held within the law, not by subrogation, but as being described by the language. The Sophie, 1 W. Bob. Adm. 368; The Onni,

Lush. 154. True, the assignee cannot see that the money is applied to the purchase of necessaries; but in case of the need which the law supposes will be proved by him to exist, and which it refers to in speaking of the condition and circumstances of the bankrupt, it may be presumed that the sum supplied will go to his use and that of his family.

The most decisive authority remains to be cited. The bankrupt act of 1841, § 3, [5 Stat 440], was identical with the act of 1867, so far as this case is concerned, the one being literally copied from the other; and Mr. Justice Story decided that the assignee could set apart a sum of money to a bankrupt wherewith to pay his board and that of his family. In re Grant [Case No. 5,693]. He further held that the court could not make the allowance in the first instance, for that it was wholly within the authority of the assignee; subject, of course, to an appeal to the court; though, the learned judge does not mention that, but it is provided for in that statute as in this.

I give no opinion whether the condition and circumstances of the bankrupt in this case will require the assignee to set apart any, and if any what, sum of money; but decide, that this matter must first be determined by him, subject to my final decision if his determination should be excepted to.

I do not mean to say that this question of fact and discretion might not be submitted to the court by consent of both parties; but I do not understand it to have been so submitted in this case.

Ordered: that the assignee may designate

and set apart to the bankrupt, N. C. Stowe, such sum, not exceeding $500, if any, as he shall find to be necessary, under section 14 of the bankrupt act; subject to exceptions and the final determination of the court, as provided by said section.

NOTE. The assignee refused to make an allowance to this bankrupt or either of his partners; and, upon appeal from this decision, there was evidence tending to show that each of the bankrupts had earned something since the bankruptcy, and two of them had no family dependent on their exertions, and were skilled workmen in their business of boot and shoe manufacturers; that the wife of the third had some little property; that the assets were small compared with the debts, the case presenting the appearance of a consumption of the capital for the pensonal expenses of the partners. The judge sustained the action of the assignee. In a case brought up a few days later (In re Steele {unreported}), the testimony was that the bankrupt and his family had suffered much from illness about the time of the bankruptcy; that much of their clothing and bedding had been destroyed for fear of infection; that a settlement would probably have been made with the creditors, if the negotiations had not been broken off by the illness of the debtor. He was an old man, and his assets were considerable. An allowance of money was ordered.

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