

Case No. 7,448.

IN RE JONES.

[4 N. B. R. 347 (Quarto, 114).]<sup>1</sup>

District Court, E. D. Missouri.

1871.

BANKRUPTCY—SERVICES UNDER CONTRACT BEFORE  
BANKRUPTCY—COMPLETION OF—COMPENSATION.

When the bankrupt under a general contract has rendered partial service, but has not completed the contract prior to the filing of the petition, but subsequently fulfills the same, unless the contract for payment was contingent upon full performance of the services, the compensation will be apportioned between the assignee and the bankrupt, in proportion to the value of the services rendered before and after the bankruptcy.

This was a motion by the assignee to require the bankrupt to give the assignee the requisite authority to enable him to collect a fee of one thousand dollars which had been allowed the bankrupt for professional services in a partition suit. The bankrupt had been retained to bring and conduct a suit for partition of real estate, and to have the share of plaintiffs set off to them. There was no contract for the amount of the fee. Interlocutory judgment for partition was rendered June 22, 1869, and the petition was filed by the bankrupt in July, 1869. After the petition the bankrupt continued his attendance on the case, appeared before the commissioners, and procured the confirmation of the report, and in November, 1869, the court taxed in his favor, to be paid out of the fund, a fee of one thousand dollars. It was contended by the assignee that the fee was carried when the judgment of partition was entered, and that the subsequent proceedings were the work of the commissioner, whose duty it was to make the partition; while for the bankrupt it was urged that the contract was indivisible, and that nothing was really earned until all the services necessary to finally close the case had been rendered. Testimony was offered to show the value of the services rendered before and after the filing of the petition in bankruptcy.

TREAT, District Judge. The contract of the bankrupt appears to have been that of an ordinary retainer to conduct a cause, and his compensation was not contingent upon his final success, or upon the final proceedings in the petition. He was, therefore, entitled to be paid for his services as he rendered them. For the services rendered before filing his petition he had a claim upon his clients, and that passes to the assignee, but he was not compelled to work for the assignee

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after the bankruptcy, and for the value of services subsequently rendered in the cause he is entitled to retain the compensation. Upon the evidence in this cause the assignee will be allowed three hundred dollars, and the remaining seven hundred dollars the bankrupt may retain, upon executing to the assignee the necessary orders to enable him to collect the three hundred dollars from the partition suit.

<sup>1</sup> [Reprinted by permission.]