

Case No. 7,451.

IN RE JONES.

[9 N. B. R. (1873) 491.]<sup>1</sup>

District Court, E. D. Michigan.

BANKRUPTCY—COMPENSATION OF ASSIGNEE—COUNSEL FEES OF PETITIONING CREDITOR.

1. An assignee, to entitle himself to the per diem allowed by section 17 of the act [of 1867 (14 Stat. 524)] must not only show he actually spent the number of days in attention to the business of his trust, but must also show the necessity for such attention.
2. For counsel fees, in an uncontested case, an allowance of fifty dollars to the petitioning creditor *held* proper and reasonable.

The register certified into court for decision, questions arising upon the allowance of the assignee's final account. It appears from the register's certificate that the assignee had charged the estate for disbursements by him for professional services the sum of four hundred and two dollars and seventy-five cents, which includes the services rendered in obtaining the adjudication of bankruptcy; services in two suits brought for the recovery of a sum held, as alleged, in violation of the provision of the bankrupt act (which resulted in a compromise by which the estate realized the sum of one thousand dollars); services in the re-examination of a claim proved against the estate, and for advice to the assignee. It also appears that the assignee had charged the estate, under the provision of the act (section 17) which allows him a reasonable compensation for his services under the discretion of the court, the sum of two hundred and ninety dollars for fifty-eight days, at five dollars per day.

By HOVEY K. CLARKE, Register:

It is proper that I should state briefly the reason of my hesitation to allow the account as presented.

As to the Assignee's Services.—The whole estate in this case, as realized by the assignee, amounts to \$1,466 70, namely: Collected on accounts, \$29 70; for goods sold, \$357; for rent, \$80, and by suit compromised at \$1,000. The whole amount of expenses

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are stated in the assignee's account at \$1,319 40, leaving a balance for distribution of \$147 30. This result should have some influence in considering the accounts which present it. I know, indeed, how impossible it would be, in some cases, to allow a proper compensation for the services of an assignee, if such allowance were to be controlled by a commission on the amount which such services realized for distribution to creditors. That, the statute fixes by the commission which it allows upon sums collected and paid out. But the "reasonable compensation" in addition to commissions for which section 17 provides, and which is to be granted in the discretion of the court, I think should be fixed in view of all the circumstances which a prudent and intelligent business man would regard as proper to influence his action. It is difficult to see, for instance, what there was in this estate, whether as shown by the result, or as appears from any other facts set up to sustain the assignee's account, which would render it judicious to spend fifty-eight days of actual service by the assignee. And, while I think that assignees should be paid for the time necessarily devoted by them to the execution of their trusts, I think also that they should be held to some responsibility for the exercise of a reasonable judgment, as to the amount of time thus to be devoted. I think the charges by the assignee in this case were made under the impression that usage had established a per diem of five dollars as something in the nature of a statutory fee, rather than as for a compensation in each case for a service actually rendered. I concede the difficulty of prescribing a definite rule by which to settle such charges; and perhaps the greater difficulty of applying any such rule to the great variety of circumstances in each case. But I think, in this case, in view of the whole amount of the estate, as developed by the result, and of what might probably have been known about it, that one hundred and fifty dollars would be an adequate compensation for all the services really required.

As to Charges for Professional Services.—The gross amount paid by the assignee, for which he presents vouchers signed by Messrs. Dickinson & Dickinson, is \$651 80. Of this \$6 80 was paid for traveling expenses, \$95 to register, clerk and marshal, \$147 25 for fees of witnesses summoned for the trial of the suit which was compromised at the sum of \$1,000, leaving the sum of \$402 75 for professional services. The charge of \$120 for obtaining the adjudication of bankruptcy is about double what is usually allowed for this service. The services rendered in the suit are fully set forth in the affidavit of Mr. J. G. Dickinson—they were, rendered in a matter possibly within the recollection of the district judge, as the trial referred to in Mr. Dickinson's affidavit was before him sitting in the circuit court,—and therefore as to the proper allowance for these services I refrain from any recommendation.

LONGYEAR, District Judge. Assignees' Services.—As a convenient mode of getting at a proper allowance for services of assignees, an allowance by the day has usually been adopted. But this is hardly a fair mode where, as in this case, the time charged for is very

large, and the estate very small. So, too, as to the per diem allowed. Five dollars is the maximum allowed in this court. It would not be reasonable to allow the highest compensation in a case like the present where the time charged for is unusually large and the estate is so small that the expenses of administration must, in any event, absorb much of the larger portion of it. Here, too, the assignee is himself a creditor, and he must submit to a sacrifice of something of his services for the common good. The opinion of the register, in its reasoning and conclusion in this regard, is approved.

Professional Services.—The usual allowance in this court for preparing petition, etc., and obtaining an adjudication when un-contested, is \$50. No reason appears why more than that should be allowed in this case except for the extra services in making the necessary preliminary investigations, for which \$25 additional must be allowed, making these items \$75 in all, instead of \$120, as charged. For services in the chancery suit \$75 must be allowed instead of \$100, as charged. The remaining items for professional services must stand as charged.

One of the chief reproaches brought against the bankrupt law is, that small estates are absorbed in costs and expenses; and it must be understood that when such cases are undertaken and prosecuted, charges for services will be limited to what the court considers a bare compensation, whether professional or otherwise.

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