

IN RE RYAN ET AL.

[6 N. B. R. 235.]¹

District Court, E. D. Michigan.

Feb. 21, 1872.

BANKRUPTCY—ASSETS—SALE
ASSIGNEE—RESALE.

BY

1. An assignee acting under an order of court directing him to sell the goods of a bankrupt for the highest price he could obtain above a certain minimum specified, must comply with the order, and if it is made to appear to the court that he has not obtained the highest price offered, the sale will be set aside and the assignee directed to refund the amount received, and hold the sale open for higher offers until a day specified, when it shall be closed for the highest offer in cash received up to that time.

[Cited in Re Stevenson, 6 Fed. 711.]

2. Costs and attorney's fee of ten dollars ordered to be paid out of the funds belonging to the estate of the bankrupt.

[In the matter of Ryan & Griffin, bankrupts.]

LONGYEAR, District Judge. The assignee had been authorised by an order of the court to sell a stock of boots and shoes belonging to the bankrupts' estate, in bulk and at private sale, for the best price he could obtain, but in no event less than nine thousand nine hundred dollars. Martin Brothers and Matthew J. Moynahan were competitors for the stock. Moynahan, on being applied to by the assignee to state the highest price he would pay for the stock, offered seven thousand two hundred and fifty dollars, and stated that that was the highest price he would pay. The assignee then informed Martin Brothers of Moynahan's bid and that they could not have the stock unless they would make a better offer. They desired time to consider. The assignee gave them time, and agreed with them that if, by a certain hour, they should conclude to pay seven thousand three hundred dollars, they should have the stock. In the mean time, and before any further

transactions had taken place between Martin Brothers and the assignee, Moynahan offered the assignee seven thousand five hundred dollars, and tendered five hundred dollars of the amount as earnest money. The assignee, honestly believing that he had the power to make the arrangement he had made with Martin Brothers, and that he was in honor bound to wait till the expiration of the time agreed on, and then to sell to them if they complied with the specified terms, declined to entertain Moynahan's offer, except on condition that Martin Brothers should not accept the terms specified by the time agreed on. Within the time agreed on Martin Brothers accepted the terms and agreed to pay the seven thousand three hundred dollars, and paid to the assignee five hundred dollars of the amount, as earnest money, and the assignee agreed that they should have the goods. Moynahan then paid the five hundred dollars he had tendered as earnest money into court, and application was made to set aside the sale to Martin Brothers, and that the assignee be directed to entertain Moynahan's offer, and a hearing was had.

The assignee in bankruptcy is an officer of the court, and is limited in his transactions in that capacity to the powers and authority conferred upon him by the bankrupt act and the orders of the court. Anything he may do outside, or in conflict with, or in violation of, such powers and authority is, of course, null and void. In this case he was acting under an order of court, authorising and directing him to sell for the highest price he could obtain above a certain minimum specified. By his arrangement with Martin Brothers it was left entirely optional with them whether they would take the goods or not, and of course that arrangement did not amount to a sale, nor even a binding agreement to sell. The assignee's agreement with them to wait till a certain time for them to make up their minds, and then if in case they concluded

to purchase at the price named, he would sell the goods to them at all events, and his refusal on account of such agreement to entertain a higher offer actually made in the meantime, were in direct conflict with and in violation of his authority and duty as specified in the order under which he was acting. The following order was made in the premises: "This matter coming on to be heard upon the order for the assignee to show cause upon the petition of Thomas Griffin, one of the said bankrupts, and the same having been heard accordingly, on consideration thereof it is ordered, adjudged and decreed that the sale to Martin Brothers by the assignee of the stock of boots and shoes heretofore authorised by an order of this court to be sold by the assignee, in bulk and at private sale, was unauthorised and in violation of the terms of the said last-mentioned order, in this, to wit: that the sale was so made to said Martin Brothers for the sum of seven thousand three hundred dollars, when a higher offer of seven thousand five hundred dollars had been made, and was then and still is pending, by one Matthew J. Moynahan; and that the said sale to Martin Brothers is therefore void and of no effect, and the same is set aside and altogether held for naught. And it is further ordered, adjudged and decreed that the said assignee be, and he is hereby directed to entertain the said offer of seven thousand five hundred dollars, so made by the said Matthew J. Moynahan, and hold the sale open for higher offers; and that he close the sale at twelve o'clock noon of the twenty-third day of February, eighteen hundred and seventy-two, for the highest offer in cash he shall receive up to that time. And it is further ordered that the assignee pay the 105 taxable costs of this proceeding, (including an attorney fee of ten dollars, to Lyman Cochrane, Esq.,) out of the funds in his hands belonging to the estate of said bankrupts. And it is further ordered that the assignee return to Martin Brothers any deposit or

payment of money they may have made to him on account of said sale.”

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