

## IN RE SMITH.

[6 Ben. 187.]<sup>1</sup>

District Court, S. D. New York.

Oct., 1872.

BANKRUPTCY—STRIKING OUT PROOF OF  
CLAIM—UNLIQUIDATED DAMAGES.

A claim by a broker, who had made contracts as the agent of the bankrupt, but in his own name, for the purchase of goods, which contracts the bankrupt refused to carry out, whereupon the broker settled them at a loss, to recover against the bankrupt the amount of such losses and of his brokerage, is a claim for unliquidated damages, and the proof of it, as a claim against the bankrupt's estate, is to be disallowed.

[See in Re Bailey, Case No. 729.]

[In the matter of W. Fleming Smith, a bankrupt.]

The register, in this matter, certified to the court that the assignee had requested him to re-examine and to disallow a claim of one Jones, the proof of which had been filed with the register, on the ground that it was a claim for unliquidated damages, and that, in obedience to his order, the parties had appeared before him in the matter, and that the proof of claim stated a claim of \$3,246 28, for and on account of moneys paid by Jones to various persons, and for interest and services, as set out in an account attached; that Jones, as broker, purchased the goods mentioned in the account, at Cincinnati, by the direction and for the account of the bankrupt, to be delivered to him, at Cincinnati, at the times therein mentioned; that the bankrupt failed to accept or receive the goods pursuant to the contracts of purchase made by Jones for him, by reason whereof the losses mentioned in the account occurred; that Jones thereupon settled and closed said several contracts of purchase, and disposed of the subject-matter thereof, and paid and suffered said several items of loss mentioned in the account,

for and on account of the bankrupt, amounting to said sum of \$3,246 28. The register certified that the only question was whether this was a claim for unliquidated damages, and that, if it was, it should be expunged.

BLATCHFORD, District Judge. The claim, as proved, must be disallowed and expunged.

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

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