IN RE SCHNEIDER.*

District Court, E. D. New York.   March 24, 1883.

BANKRUPTCY—ASSIGNER'S CHARGES.

A former assignee of a bankrupt has not a prior claim for his compensation to that of a subsequent assignee in whose hands there are not sufficient funds to pay the charges of both.

Semble, that in that case the amount should be divided *pro rata* between the two assignees.

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In Bankruptcy.

Abbett & Fuller, for the motion. .

Henry J. Darby, for the assignee.

BENEDICT, J. This is an application for an order directing the present assignee of the above-named bankrupt to pay out of the funds in his hands the sum heretofore found due a former assignee, on being discharged from his trust. It is evident that there has been no violation of the order of February 28, 1882, and so the moving party concedes. The only question, therefore, is whether the petitioner is at this time entitled to be paid the sum heretofore determined to be his proper compensation.

If the claim of the petitioner were entitled to priority of payment over the claim of the present assignee for his compensation, inasmuch as there are funds in the hands of the present assignee sufficient to pay the petitioner, there would be no reason for deferring his payment. But it is not seen that any such right of priority exists. The account of the assignee shows that the funds in his hands are not sufficient to pay his own proper charges and also those of the former assignee. If there was no likelihood of any additions to the fund, it would seem proper now to divide the amount *pro rata* between the two assignees;

but as the papers show a probability that sufficient money will shortly be realized by the present assignee to enable him to pay both claims in full, it is hardly worth while to make a division at the present time. The present motion is therefore denied, without prejudice to another motion, and without prejudice to the claim of the petitioner.

* Reported by R. D. & Wylly Benedict.