

*IN RE PEVEAR AND ANOTHER, BANKRUPTS.**District Court, N. D. New York.*

1884.

BANKRUPTCY—FRAUD—ALLEGED RETAINING OF MONEY AND EFFECTS BY BANKRUPT.

In a proceeding against a bankrupt by his assignee for an alleged retaining of money and effects, fraud being charged and a summary remedy demanded, the court should be clearly satisfied that the accusations of the petition are sustained by the proof.

In September, 1880, the assignees of the above-named bankrupts presented to the court a petition representing that the bankrupts had fraudulently concealed and withheld from them \$10,500 in money, besides a large amount of merchandise. The petitioner's prayer is for an order directing the bankrupt to pay over said sum and return said merchandise. The court thereupon made an order referring it to the register in charge to take proof of the allegations of the petition and report the same to the court with his conclusions 122 thereon. On the fifteenth of May, 1884, the register made his report, in which he found that no money belonging to the assignees has been withheld by the bankrupts or either of them. The case is now before the court on exceptions filed to the said report.

Henry M. Field, for assignees.

Daniel L. Benton, for bankrupts.

COXE, J. It cannot be said, upon the evidence submitted, that the register has reached an incorrect conclusion. In a proceeding of this nature, where fraud is charged and a summary remedy demanded, the court should be clearly satisfied that the accusations of the petition are sustained by the proof. The evidence is not of this convincing character. It is contradictory, conjectural, and replete with inaccuracies. It cannot be

said that fraud on the part of the bankrupts has been so clearly established that the court would be justified in making the order asked for in the petition.

I do not think that the findings of the register should be disturbed.

Exceptions overruled.

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