

IN RE BURT.

District Court, N. D. New York. May 20, 1886.

1. BAITKRTRPTCY—ASSIGNEE'S
COMMISSION—RETENTION OF FUNDS.

The assignee may retain from the funds in his hands the amount of fees and commissions earned; but cannot retain a sum to meet any additional allowance the court may see fit to grant.

2. SAME—DEPOSIT IN BANK—LOSS OF INTEREST.

Where the assignee fails to deposit moneys received in bank, he is liable to the estate for any interest lost through such failure.

In Bankruptcy.

In May or June, 1884, the assignee received, on account of the estate, \$5,478. On the fifteenth of October, 1884, he deposited \$4,563 in the bank designated by the court. At the third meeting of creditors the amount received by him in excess of the sum so deposited was ascertained to be \$995, and the amount due him for commissions, etc., was adjusted at \$419. The creditors now move that the assignee be required to deposit \$995, with interest at the bank rate of 3 per cent, per annum; and also the interest upon \$5,478 during the interval it remained in his hands. The motion is resisted upon the ground that the assignee was justified in retaining a sum sufficient to pay his commissions, the current expenses of the trust, and any additional allowance which the court might see fit to grant.

Elisha B. Powell, for the motion.

William Tiffany, opposed.

COXE, J. The position of the assignee is not tenable. He could, without impropriety, retain the amount of fees and commissions earned; but it was not permissible for him to appropriate several hundred dollars upon the supposition that the court might

sometime in the future award an extra allowance for his services. Care has been taken in the selection of suitable depositories in which all moneys received by assignees in bankruptcy shall be deposited. The only prudent course, therefore, is for the assignee to follow the rules laid down for his guidance. The proposition that the sum retained was needed for current expenses is sufficiently answered by the undisputed allegation that it has not been so used, but, on the contrary, the expenses of the trust have been uniformly paid from the funds in the bank.

The proof fails to show bad faith upon the part of the assignee. It does show, however, that the creditors have lost a certain amount of interest by reason of his action. The estate, and not the assignee, 549 is entitled to what the fund can earn. It follows that the assignee should forthwith deposit in the First National Bank of Oswego, New York, the sum of \$576, with interest thereon at the rate of 3Æ per cent, per annum from the fifteenth of October, 1884; also interest upon \$5,478 from the date of its reception by him until October 15, 1884. There being some dispute between the parties as to dates, etc., the computation may take place under the supervision of the register in charge, to whom it is referred for that purpose.

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