

Case No. 3,758.
[5 Law Rep. 370.]

IN RE DELAVAN.

District Court, S. D. New York.

Aug., 1842.

BANKRUPTCY—DEBTOR'S DISCHARGE—OBJECTIONS—ADMISSION OF
FICTITIOUS DEBTS—CONCEALMENT OF ASSETS—EVIDENCE.

- [1. The admission of a fictitious debt against his estate will not bar the bankrupt's discharge, under the act of 1841, unless the same is admitted in proceedings under the act. Therefore, proof of an assignment of his whole estate before the passage of the act, with preference of fictitious debts, will not operate as a bar.]
- [2. Putting a fictitious debt upon the schedules of the bankrupt is admitting the same, within the meaning of the act.]
- [3. Declarations of a debtor, at the time of his failure, that he has means to pay all his debts, are not sufficient, by themselves, to show a fraudulent concealment of assets.]

On objections to a final discharge because the bankrupt had admitted a false and fictitious debt against his estate, THE COURT decided, that an assignment of all his estate by the bankrupt in 1839, and giving in it a preference to fictitious debts to his brother, would not bar his discharge under the bankrupt act [of 1841 (5 Stat. 440)]. The debt must be falsely admitted in proceedings under this act to affect the bankrupt's petition for a certificate. THE COURT further decided, that putting a fictitious debt upon the schedules by the bankrupt as just and owing by him, was admitting such debt against his estate within the mischief and meaning of the statute. That a collusive arrangement between the bankrupt and his brother in 1839, to convey to him his (the bankrupt's) estate in fraud of his creditors, not being done in contemplation of the passage of the bankrupt law, would not prevent his obtaining his discharge under the law. That in the judgment of the court the creditors had failed to prove a debt on the schedule for \$3,000 to the bankrupt's brother, to be false and fictitious. THE COURT further decided, that declarations of the bankrupt at the time of his failure in 1838, and immediately thereafter to various creditors, that he had means to pay them fully, or to pay all his

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debts, would not be sufficient without specific evidence of the extent of these means, or the subsequent possession of property, to prove a fraudulent concealment of his estate by the bankrupt Decree of discharge granted

Mr. Mitchell, for bankrupt

Mr. Edmonds, for creditors.