

Case No. 4,429.
[1 N. Y. Leg. Obs. 343.]

IN RE ELY.

District Court, S. D. New York.

Dec. 31, 1842.

DISCHARGE AND CERTIFICATE—FILING INVENTORY.

1. Where a petition for an involuntary decree was filed on the 17 June, 1842, and it appeared that the bankrupt had, by two several assignments dated the 26 May and the 14 June preceding, conveyed his real and personal estate upon trust to be conveyed among his creditors pro rata—*Held*, that these assignments were not preferences by the bankrupt, and a bar to his obtaining his certificate.
2. Where the bankrupt had committed an act of bankruptcy by concealing himself, to avoid being arrested—*Held*, that such an act, not being of a fraudulent character, the objection to his obtaining his discharge on that ground was untenable.
3. In the case of involuntary bankruptcy, the bankrupt is not bound to file an inventory of his estate and effects, or a list of his creditors.’

This case came before the court on objections to the allowance of the discharge and certificate to the bankrupt [Smith Ely]. The facts sufficiently appear in his honor’s adjudication.

W. Skidmore, for bankrupt.

Carter, Edgerton, Schell, Mason, Marbury & Low, for creditors.

BETTS, District Judge. Previous to the petition by creditors, filed June 17, 1842, to obtain a decree of bankruptcy, the bankrupt assigned all his real and personal estate to be applied amongst his creditors pro rata, and without preference. The first deed of assignment was executed the 26th day of May, and the second the 14th day of June, 1842. These were no unlawful preferences by the bankrupt, which bar his discharge. Whether the assignees can hold and distribute the property under the trusts, or it passes by the decree of bankruptcy to the official assignee, is not a question now necessary to decide. The objection, that it amounts to a fraudulent preference is not sustained. The act of bankruptcy committed by the debtor, and the only one charged in the petition, was concealing himself to avoid being arrested, &c. This is not one of the particulars made by the act a cause for denying the bankrupt a discharge and certificate: no mere act of bankruptcy, not of fraudulent character, can have that effect under the statute. This objection is therefore untenable.

The bankrupt has not filed an inventory of his estate, or list of his creditors, &c, and that is alleged as another ground why he should not receive his discharge. The statute does not enjoin this proceeding in the case of compulsory bankruptcy. It is made necessary that the voluntary bankrupt should do it in order to obtain a decree of bankruptcy, but with that class of bankrupts it is not part of the procedure consequent upon such decree, and necessary to obtain a discharge. It might be meet and convenient that the

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practice should be so in regard to bankrupts, declared such in compulsory proceedings, but no provisions of the act, and no rule of the court enjoins it, and accordingly the party here has been guilty of no default in the omission. The objections are all overruled, and disallowed.

ELY, In re. See Case No. 5,306.