

Case No. 4,795.

{8 N. B. R. 525.}¹

IN RE FINN.

District Court, E. D. Michigan.

April, 1873.

BANKRUPTCY—FRAUDULENT PREFERENCE—ADVICE OF
COUNSEL—DISCHARGE.

1. The discharge of a bankrupt was refused where it appeared that he had made an illegal and fraudulent preference of one of his creditors, although it appeared he had acted under advice of counsel, and the transferee had surrendered the goods without suit by the assignee.
2. If the advice of counsel will be a protection in any case, it must be shown that the bankrupt acted on it in good faith, believing he had a legal right to do what he did, and the question must be one of sufficient delicacy to rebut all possible fraudulent intent in seeking the advice.

{Cited in Re Jessup, 19 Fed. 96.}

In bankruptcy. On petition for discharge [of Michael Finn] and specifications in opposition thereto. The specifications of opposition are three in number: 1. A fraudulent preference to Edward Ryan and Peter Ruppe, who were creditors of his or under liability for him, by way of a chattel mortgage of his goods. 2. A sale to the same parties of goods of the value of about one thousand dollars, with a view to prefer them and to prevent the said property from coming to the hands of the assignee, and being distributed under the bankrupt act in satisfaction of his debts. 3. The collection of moneys due the estate after the bankruptcy, and applying the same to his own use.

LONGYEAR, District Judge. The bankrupt, on his final examination, states as follows: "Some few days previous to the filing of my petition in bankruptcy I gave a chattel mortgage to Edward Ryan and Peter Ruppe for one thousand dollars, to secure them for a note for that amount which they had previously endorsed for me. After filing the petition I sold the same parties goods to the amount of one thousand and ten dollars. I suppose their object was to secure themselves for their endorsement, and my object was not to prevent their doing so if they could get it. The mortgage was cancelled at the time of the sale of the goods to the said parties." He also states that the value of goods so sold to Ryan and Ruppe was afterward paid by them to the assignee, and that what he did in giving the chattel mortgage and sale of goods was done by him under advice of counsel. He also states that after the bankruptcy he collected about six hundred dollars in money, four hundred and fifty dollars of which he paid over to the assignee, eighty dollars converted to his own use, fifty dollars "for sundry small bills previously incurred" and the balance to his attorneys for services in connection with the bankruptcy proceedings.

It does not need argument to show that the foregoing fully sustains the specifications. The fact that the property was surrendered by Ryan and Ruppe in no manner does away with the effect of the bankrupt's act in giving them the fraudulent preference. As to the

In re FINN.

statement that he acted on the advice of counsel, it is sufficient to observe that it is not made to appear that he did so in good faith, believing that he had a legal right to do what he did; neither can it be well conceived that so flagrant a violation of law, and of the most common principles of honesty and fair dealing toward his other creditors, could have been done in good faith, whether with or without legal advice. The petition for a discharge is denied.

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