Case No. 5,187.

EX PARTE GALBRAITH.

{1 N. Y. Leg. Obs. 5, note.}

District Court, Tennessee.[1]

1842.

INVOLUNTARY BANKRUPTCY—ASSIGNMENT BY PARTNERS—PREFERENCES.

{A firm of merchants doing business at New Orleans and at Clarksville, Tenn., was composed of four members, two of whom resided at the former place and two at the latter. One of the partners at Clarksville, with the assent of the other, made a deed of assignment of the firm property to secure part only of the creditors. The New Orleans members had no previous knowledge of the assignment, and dissented from it as soon as they heard of it *Held,* that the assignment was void under the bankruptcy act of 1841 (5 Stat. 440), as creating a preference; that it was an act of bankruptcy on the part of the Clarksville partners, and brought them and their effects under the operation of the bankrupt law, on the petition of their creditors; that the New Orleans partners were not personally affected by reason of the assignment; but that the firm and the partners, being insolvent, must, by reason of their insolvency, be declared bankrupts, under section 14 of the act.}

{Cited in Ex parte Hull, Case No. 6,856.}

In bankruptcy.

Before BROWN, District Judge.

It appeared that Galbraith, Cromwell & Co. were partners in trade at Clarksville, and under the firm of Galbraith, Logan & Co., at New Orleans, La. In the month of April they failed in business and became insolvent. About the time of their failure Cromwell, one of the firm and the active partner at Clarksville, made an assignment of the partnership effects to secure certain creditors, leaving unprovided for a large debt due to the Planter's Bank, M'Keage, and other creditors. The claims of the preferred creditors amounted to upwards of $80,000, and the claims left out of the deed of trust to $100,000. Logan, one of the firm, was privy and consented to the assignment made by Cromwell; the other partners, Galbraith and Greenfield, were at New Orleans, and knew nothing of it when made, and dissented to the transfer of effects as soon as they heard of it.

It was held that the preference given by Cromwell in the deed of assignment made for the benefit of a part of the creditors, was in violation of the bankrupt law {of 1841 (5 Stat. 440)}, and on account of this preference the debtors being merchants, it was a fraud a on the part of Cromwell and also on the part of Logan who consented to the transfer; that it was an act of bankruptcy on their part, and brought them and their effects under the operation of the bankrupt law on the petition of their creditors; that the deed of transfer made by Cromwell was utterly void; that Galbraith and Greenfield, who had no knowledge of the deed at the time it was executed, and dissented from the transfer as soon as they heard of it, were not personally affected by the act of Cromwell, and that they had not therefore committed an act of bankruptcy; and that Galbraith, Cromwell & Co., and

the partners composing the firm being insolvent and partners in trade, the whole of the partners must be declared bankrupts by reason of their insolvency under the 14th section of the act of congress in relation to bankruptcies, and a decree was entered accordingly.

[1] {District not given.}