IN RE HORTON ET AL.

Case No. 6,707.
{5 Ben. 562.}[1]

District Court, S. D. New York. March, 1872.

BANKRUPTCY—ASSIGNMENT WITHOUT PREFERENCES—FRAUD.

The assignee named in a general assignment executed by a bankrupt without preferences, but in fraud of the bankruptcy act {of 1867 (14 Stat. 517)}, is not, although he accepts such assignment, prohibited from proving a debt which he has against the estate, when bankruptcy proceedings have been taken.

{Cited in Re Lloyd, Case No. 8,429.}

{In bankruptcy. In the matter of Joseph H. Horton and others.}

The register in this case certified to the court that an objection had been made before him, by the assignee in bankruptcy, to the proof of debt of Aaron D. Hopping, but that he considered the proof satisfactory, and he

certified the question to the court, with his opinion, as follows: The assignee objects to the proof of the debt of the claimant, Aaron D. Hopping, on the ground of a preference, fraudulent under the bankruptcy act On the 20th day of December, 1869, the bankrupts, copartners in trade under the name and firm of Horton, Hopping & Company, being unable to pay their debts in full, made a general assignment for the benefit of creditors, appointing and making the claimant their assignee. The claimant accepted the trust, and entered upon the duties of assignee under the assignment. The assignment did not make any preferences, but proposed the equal distribution of the property of the debtors pro rata among their creditors. The petition to have the debtors adjudicated bankrupts was filed within six months after the assignment. The assignment was made by the debtors with the intent, by that disposition of their property, to defeat or delay the operation of the bankruptcy act. Aaron D. Hopping, the person receiving the assignment and conveyance, had reasonable cause to believe that a fraud on the bankruptcy act was intended, and that the debtors were insolvent. The 39th section of the bankruptcy act declares that any person, &c., who, being bankrupt or insolvent, or in contemplation of bankruptcy or insolvency, shall make any payment, gift, grant, sale, conveyance or transfer, of money, or other property, estate, rights or, credits, with intent to give a preference to one or more of his creditors, or with the intent, by such disposition of his property, to defeat or delay the operation of the act, shall be deemed to have committed an act of bankruptcy, and shall be adjudged a bankrupt on the petition of one or more of his creditors, provided such petition is brought within six months after the act of bankruptcy shall have been committed; and, if such person shall be adjudged a bankrupt, the assignee may recover back the money or other property so paid, conveyed, sold, assigned or transferred contrary to the act, provided the person receiving such payment or conveyance has reasonable cause to believe that a fraud on the act was intended, and that the debtor was insolvent, and such creditor shall not be allowed to prove his debt in bankruptcy. The creditor contemplated by the last clause is a creditor who has received a payment or conveyance, giving him a preference. If the assignment in the present case had been made to a stranger, it would not have affected the claimant's right to prove his debt. He would have stood on an equality with all the other creditors of the debtors. The assignment did not give him any preference. Under the assignment he stood on an equality with the other creditors. For the administration of the trust, he might be entitled to commissions, but commissions are only wages earned for services rendered. A preference, within the meaning of the act, is an advantage in the payment of the debt due to him, acquired by one creditor over the other creditors of the debtor. The creditor appointed an assignee by a voluntary assignment of the debtor's property, for equal distribution pro rata among all the creditors of the debtor, has the administration of the trust committed to him, but he administers the trust under the eye of the creditors, and the law will not acknowledge that, in executing

such an assignment, the creditor-assignee acquires any advantage over his fellow-creditors. A provision which would forfeit the debt in such a case, where a creditor was appointed assignee, could easily be evaded by making a person not a creditor, but in the interest of a particular creditor, the assignee. It is not to be regarded as the intent or policy of the law to promote such a result. There not being a preference in the present case, the creditor has not forfeited his right to prove the debt due to him by the bankrupts, against their estate in bankruptcy.

BLATCHFORD, District Judge. I concur in the views of the register.

[1] {Reported by Robert D. Benedict, Esq., and here reprinted by permission.}