

Case No. 7,452.

IN RE JONES ET AL.

{12 N. B. R. (1875) 48;<sup>1</sup> 7 Chi. Leg. News, 162.}

District Court, N. D. Illinois.

BANKRUPTCY—DISCHARGE—SPECIFICATIONS IN OPPOSITION TO—DEMURRER.

Specifications were filed in opposition to the bankrupts' discharge before the passage of the amendments of June 22, 1874 [18 Stat. 178]. After their passage the bankrupts demurred to the specification charging non-compliance with section 33 of the bankrupt act of 1867 [14 Stat. 533] commonly called the "fifty per cent. clause;" also to the one charging that the bankrupts, being insolvent, with intent to prefer said opposing creditor made an assignment for his benefit *Held*, that the demurrer was well taken to both these specifications, and that they should be stricken out.

[This was a demurrer of the bankrupts [Jones and Hoyt] to certain of the specifications

of opposition to their discharge.]<sup>2</sup> The bankrupts were adjudicated, on petition of creditors, July 18, 1870, and specifications were filed by one creditor before the passage of the amendments of June 22, 1874. After their passage bankrupts demurred to the one charging non-compliance with the requirements of section 33, known as the “fifty per cent. clause,” and also to the one which charged that, bankrupts being insolvent, etc., with intent to prefer said opposing creditor, made an assignment for his benefit.

A. S. Bradley, for bankrupts, cited *In re Griffiths* [Case No. 5,825]; *In re Perkins* Did. 10,983]; *In re King* [Id. 7,781]. And as to the second point, *In re Whetmore* [Id. 17,508]; *In re Schuyler* [Id. 12,494]; also the maxims of the civil law, that no one can derive aid from his own wrong, or better his condition thereby; and of the common law, “*Ex turpi causa, aut ex dolo malo, non oritur actio. In pari delicto potior est conditio defendentis.*”

W. F. Becker, for creditor, cited *In re Francke* [Case No. 5,046]; contending that, since a creditor who had taken his debtor’s property on legal process could throw him into bankruptcy for that act, he might oppose his discharge for acts in which he had participated.

BLODGETT, District Judge, sustained the demurrer on both points, and struck out the specifications.

<sup>2</sup> [From 7 Chi. Leg. News, 162.]

<sup>1</sup> [Reprinted from 12 N. B. R. 48, by permission.]