

Case No. 7,943.
[7 Ben. 5.]¹

IN RE KRUM.

District Court, S. D. New York.

July, 1873.

PREFERENCE—JUDGMENT.

On March 26th, 1872, a judgment was recovered against K. upon a promissory note given for merchandise. It was recovered in hostility to K., and without any knowledge on the part of the judgment creditor that K. was not solvent. K., at the time, was the owner of real estate. On July 19th, 1872, a petition in bankruptcy was filed against IC and the assignee in bankruptcy afterwards sold the real estate. The judgment creditor claimed that the judgment should be paid in full by the assignee, out of the proceeds of the sales: *Held*, that the transaction was prima facie fraudulent under the act [of 1867 (14 Stat. 517)], and that the debt could not be paid in full.

This matter was presented to the judge on a statement of facts agreed upon between the assignee in bankruptcy and creditors who held a judgment. The judgment was recovered on March 26th, 1872, against [Uriah] Krum, the bankrupt, and was on the same day docketed in the county clerk's office of Ulster county. The judgment was recovered on a promissory note given for merchandise. It was recovered in hostility to Krum, and without any understanding with him, and without any knowledge on the part of the plaintiffs that Krum was not solvent. At that time Krum owned a farm in Ulster county. On July 19th a petition in bankruptcy was filed against Krum, in which proceedings an assignee was appointed, who sold the farm and received the proceeds. The assets were not sufficient to pay the bankrupt's creditors in full. The judgment creditors claimed that the judgment should be paid in full out of the proceeds of the real estate.

BLATCHFORD, District Judge. The transaction seems to have been one out of the usual and ordinary course of business of the debtor, and, therefore, prima facie fraudulent, under the act. I see nothing to rebut that presumption, and therefore do not see how the debt can be paid in full.

¹ [Reported by Robert D. Benedict, Esq., and B. Lincoln Benedict, Esq., and here reprinted by permission.]