

IN RE PRICE ET AL.

{1 N. J. Law J. 228; 26 Pittsb. Leg. J. 11.}

District Court, D. New Jersey. July 26, 1878.

BANKRUPTCY—IMPEACHMENT OF JUDGMENT.

A judgment obtained by the orderly proceedings of a court cannot be impeached or set aside on the ground that the creditor had reasonable cause to believe his debtor to be insolvent, unless the debtor does something to aid him in procuring his judgment.

{In the matter of Price, Bond & Co., bankrupts.}

This is an application to expunge a proof of claim with security filed by Silas Merchant, a judgment creditor, against the bankrupt's estate, on the ground that the judgment was a fraudulent preference and void as to the other creditors, under provisions of ¹³¹⁷ section 5128 of the bankrupt act [of 1867 (14 Stat. 534, 536)].

NIXON, District Judge. Held, facts not proved. Since the decision of the supreme court in *Wilson v. City Bank*, 17 Wall. [84 U. S.] 473, a judgment obtained by the orderly proceedings of a court cannot be impeached or set aside on the ground that the creditor, when the suit was brought, had reasonable cause to believe his debtor did something to aid him in procuring his judgment,—of which the proof seems to fail in this case,—he is entitled to the advantage which his diligence has given him over other less vigilant creditors. The motion to expunge must be denied.

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