

IN RE RADO.

{6 Ben. 230.}¹

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

BANKRUPTCY—PLEADING—PREFERENCE.

A petition in involuntary bankruptcy, which states the giving to the petitioner of an unlawful preference in respect to the debt but does not surrender the preference, will be dismissed.

This was a petition in involuntary bankruptcy, which set forth a debt due to the petitioners, for tobacco sold and delivered by them to the bankrupt [Peter Rado], to the amount of \$2,027.16, and alleged that on account of that he had returned to them tobacco worth \$1,140.10, at such a time as to make such return an unlawful preference of their debt to such amount.

R. S. Newcombe, for petitioners.

Peter Cook, for Rado.

BLATCHFORD, District Judge. The petitioners, having accepted an unlawful preference in respect of the debt set forth in their petition, cannot maintain the petition, so long as they do not, by the petition, surrender such preference. An opportunity will be allowed them to move, on notice, for leave to amend the petition in that respect. If no such motion is made, the petition must be dismissed.

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

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