

obtained nothing from his security. The event, therefore, shows that he was equitably justified in refusing to take the mortgaged property for his debt, which was nearly half what the debtors owed; and the arrangement made between the other creditors and the bankrupts was wholly indefensible legally as against him.

The court cannot relieve the debtors from the consequences of their acts. It has been repeatedly held that transfers of property in contemplation of bankruptcy and for the purpose of preferring creditors, are, under subdivision 9, a bar to a discharge, without reference to the lapse of time. In the *Case of Kasson*, 18 N. B. R. 379, the present circuit judge thus expressly held. The qualification in the act of July 26, 1876, (19 St. at Large, 102) does not avail the petitioner, inasmuch as these assignments by way of mortgage in trust for some of the creditors were not such an assignment as by that act is not to prevent a discharge in involuntary proceedings, since it was not an assignment of all the debtor's property, nor for the benefit of all their creditors ratably, but designedly excluded the present opposing creditor.

The discharge must, therefore, be denied.

LA CROIX *v.* MAY and others.

(Circuit Court, S. D. New York. January, 1883.)

1. TRADE-MARKS—RIGHTS OF ALIENS—PROPERTY IN, AS AFFECTED BY ACTS OF CONGRESS.

The fact that one is an alien does not affect his right of property in a trade-mark; but that fact is a necessary allegation to establish the requisite diversity of citizenship to confer jurisdiction upon a federal court. The acts of congress fortify the common-law right to a trade-mark by conferring a statutory title upon the owner, but "property in trade-marks does not derive its existence from an act of congress." 100 U. S. 82. By the express terms of section 10 of the present act of congress the common-law right in trade-marks is preserved intact.

2. SAME—DEMURRER.

Where the demurrer was to the whole bill, and the bill was in itself sufficient, aside from the allegations contained in it, upon which the demurrer was taken, the demurrer was overruled.

S. W. Weiss, for complainant.

Briesen & Betts, for defendants.

WALLACE, J. The facts alleged in the complainant's bill entitle him to an injunction restraining defendants from the use of his trade-

mark, irrespective of the rights which he acquired by the registration of his trade-mark under the act of congress of March 3, 1881. *Taylor v. Carpenter*, 3 Story, 458; 2 Wood. & M. 1; *Taylor v. Carpenter*, 11 Paige, 296. The fact that complainant is an alien does not affect his right of property in a trade-mark; but that fact, as it establishes the requisite diversity of citizenship between the parties to confer jurisdiction upon this court, is indispensable to the cause of action alleged.

The act of congress fortifies the common-law right to a trade-mark by conferring a statutory title upon the owner; but, as was said of a former act, (*The Trade-mark Cases*, 100 U. S. 82,) "property in trade-marks does not derive its existence from an act of congress." The present act does not abridge or qualify the common-law right, but, by the express term of section 10, preserves it intact.

The theory of the demurrer is that the complainant's statutory title upon the allegations of the bill is invalid. It is not necessary to decide the questions raised, because, as the demurrer is to the whole bill, the bill is sufficient if all the allegations concerning a registration of the trade-mark were eliminated.

Demurrer is overruled.

See *Burton v. Stratton*, 12 FED. REP. 696, and note, 704, and *Shaw Stocking Co. v. Mack*, Id. 707, and note, 717

NATIONAL MANUFACTURING Co. and others v. MYERS.*

(*Circuit Court, S. D. Ohio, W. D.* February 13, 1883.)

1. PATENTS FOR INVENTIONS—REISSUE—FLY-TRAPS—VOID FOR WANT OF NOVELTY.

Reissued letters patent No. 6,811, granted to John Parker for an improvement in fly-traps, *held void for want of novelty*. The claim of said patent to the arrangement and relation of an outer case and an inclosed cone, both made of wire cloth, as forming two chambers, one dark, the other light, into the former of which flies are enticed by means of a bait through an entrance passage, and from which, when they fly, they naturally escape through a narrow aperture into the upper and better-lighted one, from which they are not likely to return through the small and darkened aperture which admitted them, *held to have been anticipated*. The claim of said patent to upright and horizontal stays in the wire-cloth case and to annular and upright stays in the wire cone, *held to be mere matters of workmanship, involving no invention*.

*Reported by J. C. Harper, Esq., of the Cincinnati bar.