

trustees will be in any way prejudiced by the recovery of the judgment. What should be done if the attachment were still in force need not be decided. Petition for discharge dismissed. Injunction denied.

---

In re TIRRE.

(District Court, S. D. New York. July 7, 1899.)

**BANKRUPTCY—INVOLUNTARY PETITION—JURISDICTIONAL AMOUNT.**

In computing the amount of the indebtedness of a person against whom a petition in involuntary bankruptcy has been filed, to make up the jurisdictional sum of \$1,000, the claim of a creditor to whom he had given a fraudulent preference, which is null and void under the act, should be included.

In Bankruptcy.

Edward K. Sumerwell, for petitioning creditors.

Henry Meyer, for the bankrupt.

**BROWN**, District Judge. The defendant, a grocer, becoming embarrassed, sold out his entire stock of goods, fixtures, etc., to one Schwoon for about \$800. This price was applied in payment of a prior debt to Schwoon for money loaned and his assumption of a grocery bill owing by Tirre to Britten & Co. for \$214.83, for which amount Schwoon gave his note to Britten & Co. Soon afterwards the remaining creditors filed a petition to have the defendant adjudged a bankrupt. The only defense is that the debts, excluding the debt to Schwoon, are less than \$1,000.

I think the debt to Schwoon should be counted in reckoning the amount of defendant's indebtedness. The sale to Schwoon, who was thereby in effect preferred, was fraudulent as against the creditors under the bankruptcy act; and it was not valid under the bankruptcy act as between defendant and Schwoon, for the reason that it was not made for a "present fair consideration." Section 67, cl. e. Being "null and void" as respects Schwoon also, the debt to him remains unaffected by the void transfer, and that debt should, therefore, be counted among the debts still owing by the bankrupt. The cases cited by the defendant under the act of 1867 all relate to petitioning creditors. That presents a different question.

To exclude a debt upon the ground of a void preference, would enable the parties to evade the bankruptcy act altogether, and thus take advantage of their own wrong.

Bankruptcy adjudged.

---

In re PEARSON.

(District Court, S. D. New York. July 7, 1899.)

**BANKRUPTCY—ACTS OF BANKRUPTCY—PREFERENCE.**

Where a debtor, being the owner of a leasehold interest in real property having a term of years to run, but not assignable without the consent of the landlord, sells the same, and applies part of the proceeds in paying the arrears of rent due, taxes on the property, and the incidental expenses

of the sale, such payment does not constitute a preference of the creditors paid, but merely a means of realizing the value of the leasehold, and therefore is not an act of bankruptcy, on which a petition against the debtor may be maintained.

### In Bankruptcy.

Louis Scheuer, for petitioners.  
Julius Offenbach, for defendant.

BROWN, District Judge. An adjudication in bankruptcy was sought against the defendant on the ground that, being the owner of a leasehold of hotel property, he had sold out and assigned the lease, with furniture, for \$9,000, and applied most of the proceeds in paying certain debts, leaving from \$6,000 to \$8,000 owing to his general creditors unpaid. The alleged preferences consisted of \$5,000 back rent for the four months previous to the sale; also some \$700 water taxes, chargeable upon the property; a broker's commission for effecting the sale, and a lawyer's counsel fee in the same business. There was also a small item of \$50 paid to the father to replace a very temporary loan to enable the defendant to pay cash for certain supplies, in accordance with an understanding made with the creditors during the month previous while efforts were making to effect a sale of the leasehold.

The lease produced showed that it could not be assigned by the defendant or transferred without the consent of the landlord. It had nearly three years to run, and it was the most valuable asset. In this situation it is manifest that nothing whatever could be realized from the lease except through the landlord's assent to a transfer, which could not be obtained except on payment of the back rent. A transfer to the purchaser, leaving the purchaser to pay the back rent, would necessarily involve the deduction of so much from the purchase price payable to the defendant for the sale of the property; so that evidently it was immaterial whether the transfer took that shape, or whether the purchaser should pay the whole \$9,000 to the defendant, he at the same time paying off the back rent and water charges and other incidental expenses of the transaction. The latter was the course actually adopted. The lease was transferred to one Knox, who paid the \$9,000 partly in cash, and partly in notes, which were in part immediately applied to pay off the back rent, taxes, and charges connected with the sale. The payment of all these was a necessary condition of realizing anything from the leasehold property, or obtaining the assent of the landlord. They were all paid from Knox's money and notes, and in their essential nature these payments were not preferences, but merely a means of making sale of the leasehold, and realizing what was possible from it. The alleged act of bankruptcy not being established, the petition should, therefore, be dismissed, but in this case without costs.

In re KENNEY.

(District Court, S. D. New York. July 7, 1899.)

**BANKRUPTCY — DISSOLUTION OF LIENS — SALE UNDER EXECUTION — TITLE OF PURCHASER — PROCEEDS OF SALE.**

Under Bankruptcy Act 1898, § 67, cl. f, providing that "all levies, judgments, attachments, or other liens obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, shall be deemed null and void in case he is adjudged a bankrupt," but that "nothing herein contained shall have the effect to destroy or impair the title obtained by such levy, judgment, attachment, or other lien, of a bona fide purchaser for value," where, within four months before the filing of a petition in bankruptcy against an insolvent judgment debtor, an execution has been issued and levied, and sale made, the title of one purchasing at such sale in good faith and without notice will not be affected by the subsequent bankruptcy; but the proceeds of the sale, remaining in the sheriff's hands, do not belong to the judgment creditor, but to the estate of the bankrupt, and must be paid over to the trustee when appointed.

In Bankruptcy.

Eugene Kremer, for petitioners.  
George Bell, opposed.

BROWN, District Judge. The petition to have Raymond W. Kenney adjudged a bankrupt was filed on April 13, 1899, the act of bankruptcy alleged being, that he had suffered a judgment to be recovered against him by one Clark in the preceding month of March, and had allowed his chattel property to be sold under execution thereunder. On answer and hearing, bankruptcy was adjudged. The sheriff having collected the money upon the execution sale made prior to the filing of the petition, a stay of proceedings was obtained against the payment of the moneys upon the execution by the sheriff, and this stay is now asked to be continued. The stay is opposed by the judgment creditor, who urges that the proceeds are not within the jurisdiction of this court and that they belong to the judgment creditor, citing the cases of *In re Easley*, 93 Fed. 419; *Henkelman v. Smith*, 42 Md. 164, 12 N. B. R. 121; and other cases.

I cannot sustain the objection to the stay. The judgment and execution having been obtained and issued but a little more than a month before the filing of the petition, the case falls within the express provisions of section 67, cl. f, of the present bankruptcy statute, which declares, "that all levies, judgments, or other liens obtained through legal proceedings" in such case "shall be deemed null and void in case he is adjudged a bankrupt." The latter part of this section provides "that nothing herein contained shall have the effect to destroy or impair the title obtained by such levy of the bona fide purchaser for value." This proviso leaves no doubt of the intent of this section. A "title" could only be "obtained by a levy" through a sale under the levy; and the proviso means that the bona fide purchaser's title shall not be impaired by the fact that as against all other persons the levy is to be deemed "null and void," in case the defendant is adjudged a bankrupt. The proviso is for