dule annexed to the duplicate copy of the petition of said bankrupt could not be read." If this were true the obvious course for the Register to pursue was to decline to issue any warrant, until a proper and legible copy of the petition was furnished; and it is not surprising that a case in which so gross an irregularity was allowed to occur, almost at its very inception, should exhibit other inexcusable blunders. The next of these is found in the messenger's return to this warrant, which states the publication of the notices in the two papers in which it was directed to be published, although, as before stated, it is now conceded that it had been published in only one of them. It is clear that the messenger could have had no proof of the publication, and, though bound by the express terms of his official oath to make true return to this warrant, he made a return not warranted by the facts—probably without taking any measures to ascertain whether it was true or false. Subsequently the schedule of the bankrupt was amended by inserting a statement of debts which had been previously omitted because they were barred by the New York Statute of Limitations, and thereupon a new warrant was issued directing service by mail of an adjourned meeting of creditors, but not directing any publication of notice of such meeting; and it was under these notices that the meeting to choose an assignee, &c., was held.

The proceeding under the first warrant, and indeed the issuing of such a warrant, was a gross and palpable blunder, and one which ordinary care and a reasonable observance of the General Orders in Bankruptcy and the General Rules in Bankruptcy adopted by this Court would have prevented. The 14th General Order requires all petitions, and the schedules therewith, to be printed or written out *plainly*; and the 3d Rule in Bankruptcy adopted by this Court, requires that all papers filed in proceedings in bankruptcy shall be written in a *fair and legible hand*, or else printed; and there was, therefore, no possible excuse for filing with the Register a paper which could not be read. The 28th General Rule of this Court in Bankruptcy, as amended, requires that due proofs of the publication of the notices directed by the warrant be furnished to the messenger, *and filed with the papers or proceedings to which they related*,—that is, with the warrant and return. If this requirement had been regarded, the neglect of the messenger in failing to procure the due publication of the notice would have been discovered, and the meeting could have then been adjourned, and a new notice given, as required by the 12th Section of the Bankrupt Act; and no other delay or unnecessary expense would have been incurred

As the case now stands, most of the proceedings already had must be set aside, and the same proceedings had with due regularity; and the party must be careful to renew his application for a discharge within the year from the adjudication in bankruptcy.

U. S. DISTRICT COURT—DISTRICT OF CALIFORNIA.

An assignment by an insolvent of all his property for the benefit of preferred creditors is an act of bankruptcy. Where property of an insolvent was assigned to creditors with fraudulent preference. Held in an action brought by assignee in bankruptcy to recover said property, that the value of property exempt from execution must be deducted, and judgment entered up for remainder.

GROW, Assignee of Wiedman, v. BALLARD and HALL.

HOFFMAN, J.—This is an action by the assignee in bankruptcy to recover the value of certain goods, alleged to have been conveyed by the bankrupt to the defendants, contrary to the provisions of the Bankrupt Act.

The bankrupt had in the years 1866 and 186", become indebted to the defendants, commission merchants in this city, for advances made to enable him to carry on his farming operations. To secure these advances he had executed two promissory notes, and had also consigned to them his crop to be applied in satisfaction of notes. After the crop had been sold the bankrupt gave an order on the defendants for the sum of ——— dollars. It happened that the partner with whom the business had chiefly been conducted was out of town when the order was presented. The other partner, forgetting for the moment the existence of the notes, merely referred to his accounts of the sales of the crop, and finding there was a balance still due the bankrupt, sufficient to meet the order, paid it. The next morning he discovered his mistake, and at once demanded a return of the money. This was refused by the party who had received it, and the bankrupt, at the demand of the creditor, thereupon executed an assignment or bill of sale of all his property, even including farming utensils and other property exempt from execution.

The question presented is: Is this transfer void under the Bankrupt Law.

Under the Bankrupt Act of 1841, the general rule was that a transfer was not void as a fraudulent preference where it was not voluntary, but was procured by the pressure of the creditor, or by measures taken by him for the enforcement of his debt. (Hilliard on Bks., 3, p. 342. Smith's Merc. L. 481, 2.)

Even if an act of bankruptcy be contemplated, yet at the instance, and on the application of the creditor, he makes payment or assigns property, such payment or assignment is valid, as against the assignees of the bankrupt. (Per Spencer, J. Phœnix v. Ingraham. 5 Johns, 428. 2 Wood & M., 347.)

The authorities, however, were not unanimous. for in *Atkinson* v. *The Farmer's Bank*, etc., it was held that a preference, in contemplation of bankruptcy, is no less an act of bankruptcy, because he yielded to the threats and coercion of the creditor. (Crabbe's R. p. 529).

But it seems to have been unquestioned that an assignment to a creditor, with notice of an act of bankruptcy already committed, is as void under the English and our own Bankrupt Laws, and the title of the assignee in bankruptcy related back to the date of the act of bankruptcy.

In *Shawhan* v. *Merritt*, it was held by the Supreme Court of the United States that a lien acquired by decree of a State Court in a suit instituted after the notice of an act of bankruptcy committed by a merchant was invalid, and the party who had received property of the bankrupt, or its proceeds, under such decree, must account to the assignee therefor. (7 How. R., 641.)

Both in England and America it is held that a general assignment by an insolvent of all his property for the benefit of preferred creditors, is an act of bankruptcy, though made without moral fraud and under the importunity of creditors. (*Ex parte* Brenemin, Crabbe R., 456).

In *Worsley* v. *De Matos*, Lord Mansfield observes: "A conveyance of a part may be public, fair and honest, but a conveyance of *all* must either be fraudulently kept secret or produce an immediate absolute bankruptcy." (1 Burr. R., 467-8). And in *Wilson* v. *Day* (2 Burr. R., 827), the same Judge says: "This deed is an act of bankruptcy itself. It defeats the whole bankrupt law; nothing remains for the creditors in any shape, but his whole estate is put into the hands of his own trustees; therefore, of course, h is a bankrupt, the moment he has executed the deed, for there is nothing at all left for his creditors. (See Avery & Hobbs on Bankrupt Law of U. S., p. 261, and cases cited). (See, too, 7 East., 138; 1 W. Bl., 441; 7 Scott, N. K., 900). Even an assignment of trustees of one's whole estate for the purpose of equal distribution among all the creditors would, under our recent Act, be held void, for it would be an attempt to substitute the trustee selected by the bankrupt for the assignee contemplated by the Act, and the conveyance would be made with a view to prevent the property from coming to the assignee in bankruptcy, and to prevent the same from being distributed under the Bankrupt Act." (4 East, 230; 17 Ves., 139; Cowp., 123; 3 Esp., 229 3d Scott, N. R., 245.)

In the case at bar, the insolvency of the debtor was of course known to the creditor, who procured a transfer to himself of the whole estate of the debtor.

This, under the authorities above cited, was an act of bankruptcy *per se*, and was invalid under the English Law or under the Act of 1841.

It was, therefore, necessarily invalid under the Act of 1867, which is far more stringent in its provisions, and seems framed to deprive an insolvent debtor of any right to give a preference or to do any act which will prevent the equal distribution of his property among all his creditors.

Among the property transferred were several articles exempt from levy and sale on execution.

As to these there could have been no intent to prevent them from coming "to the assignee or being distributed under the Act," or any "design to hinder, delay, or impede the operation of the Act," to give to one creditor what was the property of all. Being exempt from execution, they could not pass to the assignee, nor could their proceeds be distributed as assets, nor could any creditor have any claim to or interest in them. The value of these articles must, therefore, be deducted, but for the value of the remainder of the property a judgment must be entered.

IMPORTANT TO PRACTITIONERS.

Amendments to General Orders in Bankruptcy, Adopted by the Supreme Court of the United States, at December Term, 1867.

RULE XIII.

Marshal as Messenger.

It is ordered that rule thirteen be amended so as to read as follows:

It shall be the duty of the Marshal as Messenger to take possession of the property of the bankrupt, and to prepare, within three days from the time of taking such possession, a complete inventory of all the property, and to return it as soon as completed. The time for making the inventory and return may be enlarged, under proper circumstances, by special order of the District Court: [*Provided*, however, that if any goods or effects so taken into possession as the property of the bankrupt, shall be claimed by or in behalf of any other person, the Marshal shall forthwith notify the petitioning creditor of such claim, and may, within five days after so giving notice of such claim, deliver them to the claimant or his agent, unless the petitioning creditor or party at whose instance possession is taken s all, by bond, with sufficient sureties to be approved by the Marshal, indemnify the Marshal for the taking and detention of such goods and effects, and the expenses of defending against all claims thereto, and, in case of such indemnity, the Marshal shall retain possession of such goods and effects, and proceed in relation thereto as if no such claim had been made.

And provided further, That in case the petitioning creditor claims that any property not in the possession of the bankrupt belongs to him, and should be taken by the Marshal, the Marshal shall not be bound to take possession of the same unless indemnified in like manner.] He shall also, in case the bankrupt is absent, or cannot be found, prepare a schedule of the names and residences of his creditors, and the amount due to each, from the books or other papers of the bankrupt that may be seized by him under his warrant, and from any other sources of information; but all statements upon which his return shall be made shall be in writing, and sworn to by the parties making them, before one of the Register in Bankruptcy of the Court, or a Commissioner of the Courts of the United States. In cases of voluntary bankruptcy, the Marshal may appoint special deputies to act, as he

may designate, in one or more cases, as Messengers, for the purpose of causing the notices to be published and served as required in the eleventh section of the act, and for no other purpose. In giving the notices required by the third subdivision of the eleventh section of the act, it shall be sufficient to give the names, residences, and the amount of the debts (in figures) due the several creditors, so far as known, and no more.

RULE XXXII.

As to Forms and Schedules.

The thirty-second rule in bankruptcy is amended so as to read as follows:

The several Forms specified in the Schedule annexed to these Orders for the several purposes therein stated, shall be observed and used, with such alterations as may be necessary to suit the circumstances of any particular case. In all cases where, by the provisions of the act, a special order is required to be made in any proceeding, or in any case instituted under the Act in a District Court of the United States, such order shall be framed by the Court to suit the circumstances of the particular case; and the forms hereby prescribed shall be followed as nearly as may be, and so far as the same are applicable to the circumstances requiring such special order. In proceedings in Equity, instituted for the purpose of carrying into effect the provisions of the act, or for enforcing the rights and remedies given by it, the Rules of Equity Practice established by the Supreme Court of the United States, shall be followed as nearly as may be. In proceedings at Law, instituted for the same purpose, the Rules of the Circuit Court regulating the practice and procedure in cases at Law, shall be followed as nearly as may be. But the Court, or the Judge thereof, may, by special rule in any case, vary the time allowed for return of process, for appearance and pleading, and for taking testimony and publication, and may otherwise modify the rules for the preparation of any particular case, so as to facilitate a speedy hearing.

Petitioners in Bankruptcy.

New York—Southern District.

1838—Charles W. Jones and Edwin Blauvelt, Livery Stable keepers, Nyack, N. Y.; solicitor M. M. Dickenson, Nyack, Rockland co., Oct. 6; register Close.

1839—Louis Seifeid, butcher, 814 Eighth avenue; solicitor John H. White 169 Broadway, Oct. 9; register Fitch, Oct. 12, at 2 p.m.

1840—John McCartan, Manufacturer, formerly of 113 & 115 East 48th street; solicitor S. H. Stuart 12 Chambers st., Oct. 9; register Dayton, Oct. 20, at 2 p.m.

1841—Moses Grossman, trader, N. Y. city; solicitor John W. Bird 137 Broadway, Oct. 9; register Allen Oct. 12, at 2 p.m.

1842—Richard G. Williams, no business, N. Y. city; solicitor C. G. Reynolds 61 Wall street, Oct. 10; register Dwight, Oct. 13, at 2 p.m.

1843—Gilbert R. Van Allen, (surviving partner of late firm of Van Alen & Rice,) merchant, N. Y. city; solicitor Dewitt C. Brown 82 Nassau street, Oct. 10; register Ketchum Oct. 12, at 2 p.m.

1844—Daniel Messmore, merchant, 33 & 40 Dey st.; solicitor Thorndyke Saunders, 25 Chambers street, Oct. 10; register Williams, Oct 14, at 2 p.m.

1845—Charles Goodyear and George Goodyear, for themselves and against their co-partners George C. Goodyear and Harvey Durand, brokers. 18 Broad street; solicitor Henry C. Sawyer 16 Wall street, Oct. 10; order to show cause Oct. 24, at 11 a.m.

1846—William Marchant, store-keeper No. 80 Front street: solicitor A. H. Wagner 202 Broadway, Oct. 12; register Fitch, Oct. 13, at 2 p.m.

1847—John J. Schillinger, beer brewer, 93 Third st.; solicitor Peter Cook 293 Broadway, Oct. 13; register Dayton, Oct. 17, at 2 p.m.

1848—Adolphus Schlessinger, merchant, N. Y. city; solicitor Gustavus Levy, 15 Centre street, Oct. 13; register Allen, Oct. 14 at 2 p.m.

1849—Louis Samual, merchant, New York city; solicitor Henery Morrison, 200 Broadway, October 13; Register Dwight, October 15, at 2 p.m.

1850—Moses H. Baumgarten, merchant, New York city; solicitor Henry Morrison, 200 Broadway, October 13; Register Ketchum, October 15, at 3 p. m.

1851—Francis Reilly, baker, Morrisania, Westchester co.; solicitor James F. Anderson, Melrose, N.Y., October 14; Register Close, October 21, at 10 a.m.

1852—Bernard P. Woods, 146 E. 49th street; solicitors Cambreling & Pine, 14 Wall street, October 15; Register Williams, October 22, at 2 p. m.

1853—Henry S. Calvert, fancy dry-goods, &c., 493 Eighth Avenue, *ads.*, Richard H. Hinsdale and John P. Prankard, solicitors for petitioners, N. A. Chedsey, 6 City Hall Place, October 16; order to show cause, October 24, at 11 a. m. Injunction issued.

1854—Simon Abrahams, merchant tailor, 337 Hudson street, *ads.* Samson Morgenthan and *al.*; solicitor for petitioners, Charles H. Smith, 243 Broadway, October 21st.; order to show cause October 31, at 11 a. m. Involuntary. Injunction.

1855—Oscar Reinstein & Simon Mamlok, manufacturers of clothing, 87 Walker street, *ads.* Christian F. Adolph Dambmann; solicitors for petitioners Barney, Butler & Parsons, October 22; order to show cause, October 31, at 11 a.m. Injunction. Involuntary.

1856—Frederick W. Leggett, merchant, 46 Pearl st., New York City; solicitor Edwin Moore, 37 Wall street, October 24; Register Fitch, October 27, at 2 p. m.

1857—Charles H. Wooster, formerly of 449 Broadway New York City; solicitor Edwin James, 229 Broadway, October 24; Register Dayton, October 27, at 2 p. m.

1858—Louis Lodorici, merchant, formerly of 82 Wall street; solicitors Vose & McDaniel, October 24; Register Allen, October 27, at 2 p.m.

1859—Simon Abrahams, merchant tailor, 337 Hudson street; solicitor J. Sterling Smith, 291 Broadway, October 26; Register Dwight, October 27, at 2 p. m.

1860—Deartt C. Hall, (late firm of Avery, Upham & Co., Chicago, Ill.); solicitor John H. Platt, 40 Wall street, October 26; Register Ketchum, October 27, at 2 p. m.

1861—Janvier Le Duc, merchant, (former firm of Le Duc & Gibbs, Chicago, Ill.); solicitor Thorndyke Saunders, 25 Chambers street, October 26; Register Wiliams, October 27, at 2 p. m.

1862—Abraham C. Prince & Robert Prince, junr., coal dealers, 140 Waverly place, 343 Bowery and Foot of 14th street, North River; solicitor Oliver C. Warfield, 78 Cedar street, October 26; Register Fitch, November 16, at 2 p.m.

1863.—Josiah C. Waters (late firm of Waters & Thorpe,) silver plate ware, 14 John Street, New York City; solicitor A. C. Fransioli, 20 Nassau street, October 26; Register Dayton, October 27, at 2 p. m.

1864.—The New York & Bremen Mail Steamship Company *ads.* George B. Coale, Secretary of the Merchants' Mutual Insurance Company of Baltimore; solicitor for petitioner John McDonald, 26 Exchange Place, October 26; order to show cause November 7, at 11 a. m. Injunction issued. Involuntary.

1865—Napoleon Le Brun, merchant, (formerly of Philadelphia, Pa.); solicitor J. Buchanan Henry, 33 Wall street, October 28; Register Allen, October 29, at 2. p.m.

DISCHARGES IN BANKRUPTCY.

Southern District of New York.

October 6.

No 1335—Silas Seymour.
1491—Adolph F. Seastedt.
477—Daniel J Nash.
398—Joseph M. Lane.
1340—James G. Duncan.

October 8.

1505—Charles L. Licher.
1026—Jules Crucy.
1026—Adrian Crucy.

October 9.

1301—John C. C. Downing.

October 12.

891—Jacob M. Harris.
1515—Jacob Gunst.
918—Joseph H. Titus
1425—Alonzo F. Robbins.

October 14.

1614—John A. Davis.
1502—David C. Reid.
1734—John Alleger. Jr.
852—William G. Dean.
1404—Lewis Richmond.
1452—Charles C. Lewis.
1480—George Haviland.
695—William Ward.

October 15.

898—John R. Faure.

October 16.

1385—Christian F. W. Yergers
1089—Lewis Benjamin.

October 17.

1386—Henry S. Hawks.
1560—William H. Jones.
1638—Abraham Gunst.

October 19.

205—Curtis Judson.
1390—John H. Kimball.
1004—William L. Van Antwerp.
1072—Richard W. King.
1554—Howard T. Tripp.
1371—George B. Foote.
1400—Nils Peter Larsen.
1640—Michael Doody.
1407—Daniel Tyrrel.
1242—Sacharin Rode.

October 20.

798—David W. Pierce.
522—Jason H. Bockover.
770—Alexander Bonnell.

October 21.

838—Walworth D. Crane.
838—John B. Fassitt.
838—Joseph B. Danckelman.

October 22.

1403—Ferdinand Brandies.
1403—Philip Loeb.
1403—Solomon Weil.

October 23.

1037—Edward G. Catlin.
1549—William Atwater.
1009—Robert McCord.

October 24.

1498—Eben W. Ball.
1462—William A. Ellery, jr.
1525—Arthur W. Sherman.
464—Hans J. Hansen.

October 26.

781—Frederick A. Dreyer.
323—Aaron Elias.

October 27.

1270—William L. Hahn.
1206—John F. Zebley.