

Case No. 4,524.

IN RE ERWIN ET AL.

[3 N. B. R. 580 (Quarto, 142).]¹

District Court, S. D. Georgia.

Feb. 1, 1870.

BANKRUPTCY—DISTRIBUTION OF ASSETS—PRIORITY OF JUDGMENT
CREDITOR'S CLAIM.

In the distribution of the assets of the bankrupt derived from the collection of a promissory note, a creditor whose claim is in judgment has no priority, and will share pro rata with the other creditors.

I, Frank S. Hesseltine, register of the said; court in bankruptcy, do hereby certify, that in the course of the proceedings in said cause, the following question pertinent to the same arose; and was stated and agreed to by Harden & Levy, counsel for John U. Meyer, creditor, and Hartridge & Chisholm, who appeared for Calvin L. Cole, a creditor of said bankrupts. Erwin & Hardee filed their petition to be adjudicated bankrupts, December 31, 1868. They returned among their assets one promissory note for twelve thousand dollars, which the assignee collected. Calvin L. Cole proved his claim on a judgment obtained against Erwin & Hardee, in November, 1868, and, at the second meeting of creditors, claimed that the said judgment had priority, and should first be paid in full, which claim counsel for John U. Meyer opposed, and asked that the assets be distributed pro rata. And the said parties requested that the issue thus raised should be certified to your honor for your opinion thereon.

Opinion of the Register:

In the Case of Winn [Case No. 17,876], your honor decided that a lien of the judgment upon the property of a bankrupt "follows the property into the hands of the assignee, and that a judgment in this state retains its lien in the court of bankruptcy." In accordance with this decision, where property of the bankrupt which was subject by the laws of this state to the lien of judgments, has been sold free, and discharged from the incumbrances thereon, it has been my practice, as register, in ordering a distribution of the assets derived from the sale of the property, to pay the creditors holding judgments according to the priority of their liens. It is only in such cases where the lien upon the property was transferred to the fund in court derived from the sale of the property, that I have considered the judgment-creditor as entitled to any priority in the distribution of the assets. In this case the fund in court is derived from the collection of a promissory note. The judgment had no lien upon the said notes in the hands of the bankrupts, for the Code, § 3524, expressly declares, "a judgment has no lien upon promissory notes in the hands of the defendant." Hence, by virtue of a lien, it cannot claim to be first satisfied out of the fund derived from this note.

In re ERWIN et al.

The judgment-creditor, Cole, I understand, bases his claim to be first paid in full, upon the laws of this state, governing the distribution of the estate of a decedent, and of money brought into a state court. Would he, under like circumstances, possess any priority as distributee of the estate of a decedent? It is true that paragraph 2494 of the Code, places in prior rank over written obligations and book accounts, "judgments, mortgages, and other liens created during:

the lifetime of deceased, and to be paid according to their priority of lien;" but it also says, "mortgages and other liens on specific property to preferred only so far as such property extends." But the Code of Georgia does not govern in the distribution of the estate of a bankrupt. The bankrupt's assets must be divided in accordance with the provisions of the bankrupt act [of 1867 (14 Stat. 517)]. Section 27 enacts—"That all creditors whose debts are duly proved and allowed, shall be entitled to share in the bankrupt's property and estate, pro rata, without any priority or preference whatever, except that wages due from him to any operative, or clerk, or house-servant, to an amount not exceeding fifty dollars, etc." By the bankrupt act the judgment-creditor enjoys no advantage, except where the bankrupt returned property upon which the judgment is a lien by the laws of the state in which the property lies. Unquestionably in this case, Cole, the judgment-creditor, must share pro rata with the other creditors.

ERSKINE, District Judge. After a careful consideration of the question submitted and the ruling of the register, I am clearly of the opinion that there should be a pro rata distribution, and therefore affirm the decision of Mr. Register Hesseltine. The clerk will please certify this to Sir. Hesseltine.

¹ [Reprinted by permission.]