

Case No. 4,714.

IN RE FEELY.

{3 N. B. R. 66 (Quarto, 15)¹ 15 Pittsb. Leg. J. (O. S.) 291.}

District Court, W. D. Pennsylvania.

March 21, 1868.

BANKRUPTCY—ACT OF 1867—EXEMPTIONS—DISCRETION OF ASSIGNEE—EXEMPTION UNDER STATE LAW.

1. Under section 14 of the bankrupt law [of 1867 (14 Stat. 522)] household and kitchen furniture and other articles and necessaries to the amount of five hundred dollars may be set apart.
2. The discretion of the assignee limited to the “other articles and necessaries.” Rule for exercising such discretion laid” down.

{Cited in Re Steele, Case No. 13,346.}

3. Property of the value of three hundred dollars exempted under the laws of the state; but such exemption cannot include the same species of property as are named in the bankrupt law.
4. The state exemption must be ascertained by the mode designated by the state law.

I, Samuel Harper, one of the registers of said court in bankruptcy, do hereby certify, that in the course of the proceedings in said cause, before! me, the following question arose and was stated and agreed to by the counsel for the opposing parties. In his schedules, the bankrupt [Martin W. Feely] claimed exemptions as follows: Under the bankrupt act a burial lot in St. Mary’s Cemetery, valued at forty dollars, and the wearing apparel of himself, his wife, and children, to the value of one hundred and sixty-seven dollars and fifty cents; and under the laws of the state of Pennsylvania, sundry articles, being the stock of trade of the bankrupt as a retail grocer, of the value of three hundred dollars. The assignee, in his report to the “court, set apart, to the bankrupt the burial lot and clothing, and denied to him the property claimed as exempt by the state laws. To this report, so far as it denied the latter named property, the bankrupt, through his counsel, has filed exceptions.

The assignee contends that the bankrupt is not entitled to claim, and cannot be allowed any property under the state laws, unless such laws exempt by name different kinds of property than are specified in the former part of the 14th section of the bankrupt law.

The bankrupt’s counsel contend that the clause of the 14th section relating to the exemption by the state laws, allows the bankrupt to claim any property to the amount of \$300, he may select, whether such property be specifically named or not.

By Samuel Harper, Register:

The 14th section of the bankrupt law contains the following provision: “Provided, however, that there shall be excepted from the operation of the provisions of this section the necessary household and kitchen furniture, and such other articles and necessaries of such bankrupt as the said assignee shall designate and set apart, having reference in the amount to the family, condition, and circumstances of the bankrupt, but altogether not

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to exceed in value, in any case, the sum of five hundred dollars; and also the wearing apparel of such bankrupt, and that of his wife and children, and the uniform, arms and equipments of any person who is or has been a soldier in the militia, or in the service of the United States; and such other property as now is, or hereafter shall be, exempted from attachment, or seizure, or levy on execution by the laws of the United States, and such other property not included in the foregoing exceptions as is exempted from levy and sale upon execution or other process or order of any court "by the laws of the state in which the bankrupt has his domicile at the time of the commencement of the proceedings in bankruptcy, to an amount not exceeding that allowed by such state exemption laws in force in the year eighteen hundred and sixty-four." The true construction of this clause will allow the bankrupt the following exemptions, without qualification, viz.: First Necessary household and kitchen furniture to an amount not exceeding five hundred dollars. Second. "Wearing apparel of the bankrupt, his wife, and children. Third. Uniforms, arms, and equipments, if bankrupt has been or is in the military service. Fourth. Other property exempt by the laws of the United States; and Fifth. Property exempt by state laws of different species from that already specified. In addition to the foregoing it is the duty of the assignee, in the exercise of a sound legal discretion, taking into consideration "the family, condition, and circumstances of the bankrupt," to set apart other articles and necessaries, but so that with the household furniture, the amount shall not exceed the sum of five hundred dollars. In considering the "family," the assignee must have regard to the number composing it; in inquiring after the "condition," he must ascertain the social status, and whether ill health prevails or not; and in regard to the "circumstances," he must inquire how the bankrupt

is employed, what his income is; “whether any—and if any, how many—of the family earn their own living, and whether they contribute to the support of the others; and also how much and what property the bankrupt is entitled to under the state laws.

It has been decided so frequently in other judicial districts, that the exemption under state laws is in addition to that allowed by the bankrupt law, whether the state laws exempt specifically, or allow the debtor to select, that I need not state the reasons why such an allowance should be made. But I am clear in the opinion, that the language of the clause relating to the state exemption materially qualifies the clause itself. The words “other” and “not included in the foregoing exceptions,” properly construed, must deny to the bankrupt the right to claim household and kitchen furniture, wearing apparel, and the uniform, arms, and equipments of a soldier as exempt under the laws of the state, because such property is by name included in the preceding exceptions. If such be not the proper construction, those words can have no possible meaning, for without them the clause would be complete thus, “and such property as is excepted from levy and sale upon execution or other process, etc.” Whilst a bankrupt is entitled to three hundred dollars worth of property, as exempt by the laws of the state of Pennsylvania, the peculiar construction of the clause under consideration requires him to make his claim upon other property than that specifically mentioned in the former part of section 14. In the case of a bankrupt who has one thousand dollars worth of household furniture, and who has claimed five hundred dollars of it under the 14th section, he cannot, under the latter clause of that section, claim to be allowed three hundred dollars of it under the state laws. In this view the assignee cannot set apart to the bankrupt, under the state laws, any property specifically designated by the bankrupt law; but any property not so designated, he may; and, in setting apart such property, he must be governed by the amount allowed and the mode designated by the law of the state under which the exemption is claimed. The exceptions to the assignee’s report are sustained, and the exemption, as claimed by the bankrupt, allowed. And the said parties requested that the same should be certified to the judge, for his opinion thereon.

Dated at Pittsburg, the 19th day of March, A. D. 1868.

MCCANDLESS, District Judge. The decision of the register is affirmed. In re Stevens [Case No. 13,392]; In re Welch [Id. 17,366]; In re Hay [Id. 6,253].

¹ [Reprinted from 3 N. B. R. 66 (Quarto, 15), by permission.]