

IN RE FETHERSTON.

Case No. 4,753.

[5 Chi. Leg. News, 193; 3 Pittsb. Rep. 480; 20 Pittsb. Leg. J. 77.]

District Court, W. D. Pennsylvania.

Dec. 19, 1872.

BANKRUPTCY—SETTING PROPERTY AS EXEMPT—EXCEPTIONS TO ACTION OF
THE ASSIGNEE.

Where property has been set apart by the assignees of a bankrupt under his claim for exemption, and no exceptions are taken to the action of the assignees, the property exempted passes to the bankrupt freed from the jurisdiction of the bankrupt court.

In bankruptcy.

In re FETHERSTON.

By N. W. Shafer. Register:

A. Ortleib & Co., by indenture of lease dated April 1st, 1867, demised the premises, 175 Lacock street, Allegheny City, Pa., to P. Fetherston for the term of six years, viz.: to April 1st, 1873, at the rent of one hundred and fifty dollars a year, payable monthly. In the lease or instrument of lease is a clause "waiving the benefit of all laws or usages exempting any property from liability for rent." On the 12th day of June, 1872, A. Ortleib & Co., issued their landlord's warrant, and under and by virtue of it an actual levy was made on the premises, 175 Lacock street, Allegheny City. On the 15th day of June, 1872, a creditor's petition was filed against Fetherston, and upon it in due course, he was adjudged a bankrupt. As soon as it became known that Fetherston was declared a bankrupt, counsel for A. Ortleib & Co., the landlords, directed the officer not to proceed, that P. Fetherston had gone into bankruptcy, and that all sales and transfers of his property were prohibited. This notice suspended proceedings under the warrant. The premises 175 Lacock street, Allegheny City, are occupied by P. Fetherston as a saloon, and the articles distrained on the premises were one looking glass, eleven pictures and frames, four barrels of ale, twenty-seven barrels of stock ale, one clock, one barrel of porter and one ice chest. The amount of rent in arrear on the first day of June, 1872, was three hundred and twenty-five dollars, and, it was to cover the rent then due that the distraint of June 12, 1872, was made. By the levy under this warrant, A. Ortleib & Co. acquired a valid lien. In re Butler [Case No. 2,236].

The bankrupt claims, under the 14th section of the bankrupt act [of 1867 (14 Stat. 522)], household and kitchen furniture, wearing apparel, etc., and about which there is no question; also, under the laws of Pennsylvania (act approved the ninth day of April, 1849), he claimed in his schedules "stock and fixtures and stock ale at No. 175 Lacock street, Allegheny City, Pa." Other articles were also set apart, but are not in dispute. On the 25th day of October, 1872, the assignees, with notice to the bankrupt a few days afterwards, set apart the said articles as exempt under the act of the general assembly of Pennsylvania, approved April 9, 1849. The premises No. 175 Lacock street, Allegheny City, being in dispute, the assignees never took possession of them. They were and are claimed by one B. Grant by virtue of an assignment dated——, and duly signed, sealed and delivered by the bankrupt to said Grant.

The register is of opinion that in view of the fact that the bankrupt claimed the articles in the saloon, and saloon itself, at 175 Lacock street, Allegheny City, as exempt under the act of 9th of April, 1849; that in pursuance of said claim by him, they were actually set apart to him with notice, and no exceptions to their actions in this behalf were filed, the said saloon and fixtures and stock ale, at No. 175 Lacock street, Allegheny City, Pa., were withdrawn from the jurisdiction of this honorable court. It would therefore seem that the bankrupt has mistaken his forum, and that the injunction heretofore granted would have

YesWeScan: The FEDERAL CASES

to be dissolved. The decision of the parties belongs properly to the state tribunals under whose laws they are claimed. In re Stevens [Case No. 13,392]. I therefore recommend that the injunction granted November 5, 1872, be dissolved.

PER CURIAM. The opinion of the register is affirmed, and the injunction is dissolved.