

Case No. 5,120.

[3 Woods, 388.]<sup>1</sup>

IN RE FRIEND.

Circuit Court, S. D. Georgia.

April Term, 1877.

BANKRUPTCY—EXEMPTION UNDER STATE LAW—SETTING APART SPECIFIC GOODS.

1. Where no property is claimed by a bankrupt under the specific exemptions of the bankrupt act [of 1867 (14 Stat. 517)], his claim for an allowance must stand upon the exemption granted by the laws of the state.
2. Under the law of Georgia which exempts personal property of the value of one thousand dollars in specie, the bankrupt is not entitled to money the proceeds of articles sold by the assignee.
3. In this case the bankrupt set apart and claimed certain specific goods as exempt. The assignee took no notice of the claim, but mixed the goods claimed with others and sold all indiscriminately, and afterwards allotted to the bankrupt out of the proceeds one thousand dollars. *Held*, that the assignee mistook the law. All the bankrupt was entitled to was the proceeds of the specific goods claimed and set apart by him.

[In bankruptcy. In the matter of Joseph Friend.]

This was a petition to review the decree of the bankrupt court on exceptions to the assignee's allowance of exemptions.

Clifford Anderson, for petitioner.

R. E. Lester, contra.

BRADLEY, Circuit Justice. On examination of this case, I am of opinion that the assignee erred in setting apart to the bankrupt one thousand dollars on a specie basis (or eleven hundred and twenty-five dollars currency) in money, which accrued from the sale of his goods.

As no property was claimed by the bankrupt under the specific exemptions of the bankrupt act, his claim for an allowance must stand upon the exemption granted by the laws of the state. This, as to personal property (which is the only kind of property here in question), is "personal property to the value of one thousand dollars in specie." Const. Ga. art. 7. But the articles must be specifically claimed (Code, 2003); and if money is claimed, it is to be invested under the direction of the ordinary, in such articles as the applicant may desire—and in no case will the allowance of cash, without such investment, be a valid exemption (Code Ga. § 2016a; *Smith v. Turnley*, 44 Ga. 243). It is probable that the bankrupt court would not feel bound to superintend such investment, but, without it, would allow an exemption of money on hand. But this was not on hand. The money set apart is the proceeds of sales made by the assignee. The bankrupt should have specifically claimed the articles he desired before their conversion, unless deprived of an opportunity of doing so.

In re FRIEND.

In this case the bankrupt did specifically claim certain goods which he set apart and separated from his other goods. The assignee took no notice of this separation, but mixed the goods together and sold them indiscriminately. The assignee then allotted to the bankrupt, out of the proceeds of sale, one thousand dollars in cash on a specie basis, as before stated. In doing thus he mistook the law. The bankrupt was entitled to the specific goods set apart and claimed by himself, if they did not exceed in value the amount of one thousand dollars in specie, and to those goods alone. The assignee having sold the entire stock, the bankrupt is only entitled to the proceeds of the specific goods set apart by himself. He cannot claim any advantage from the fact that the assignee improperly mixed the goods together. That would be unjust to the creditors. They have as much right to complain of the mixture as the bankrupt has. The assignee was the common agent of both parties; or rather, he was the agent of the law, and neither party ought to be prejudiced or advantaged by his act. I do not find any sufficient proof of fraud to deprive the bankrupt of his right to have property exempted under the law.

The decree of the district court [case unreported], and the decision of the register affirmed thereby, are reversed, and the matter is referred back to the assignee to ascertain (as near as can be done) the actual proceeds of the property claimed and set apart by the bankrupt (not to exceed one thousand dollars in specie), and to pay the same to him and amend his schedule accordingly. The costs of this petition for review to be paid out of the general assets of the bankrupt estate.

<sup>1</sup> [Reported by Hon. William B. Woods, Circuit Judge, and here reprinted by permission.]