

Case No. 5,181.

IN RE GAINNEY.

[2 N. B. R. (1869) 525 (Quarto, 163).]¹

District Court, North Carolina.²

BANKRUPTCY—UNAUTHORIZED EXEMPTION MADE BY ASSIGNEE—EXCEPTION
BY CREDITORS.

Where creditors claim that unauthorized exemptions are exempted to be made to the bankrupt by the assignee, they must except, under general order nineteen, to his report within the requisite time, as respects household furniture, necessary articles. &c., but as to real estate the attempted exemption is void, no title thereto passes from the assignee, and creditors need not except to the report but only to the account of the assignee, and hold him responsible for any deficiency.

In re GAINNEY.

The branch bank of Cape Fear, Fayetteville, North Carolina, creditor of said bankrupt [Elizur Gainey], by its attorney, John W. Hinsdale, excepts to so much of the schedule of exempted property filed by W. H. Morrow, assignee of the said bankrupt, on the 16th day of September, 1868, as sets apart to said bankrupt, as his own property, a homestead of fifty acres of land, described at length in said schedule, for the reason that the same is unauthorized by law. Question certified by Register Guthrie, to the judge for decision.

J. W. Hinsdale, for bank.

BROOKS, District Judge. The question presented by the certificate of Mr. Register Guthrie in this case, is the same presented from the Fourth district, in Re Harris [unreported], and in Re Harris [Case No. 4,647], and which have been fully answered by the opinion filed in the latter case. It is not necessary that I should repeat the same now. By the assignment of the register to the assignee of the bankrupt, Gainey, the title to the real estate attempted to be exempted passed to said assignee; the attempt to exempt was ineffectual; the title then remains in the assignee, and will so remain until the same shall be conveyed or divested in some one of the ways provided by law.

It is not required that exception shall be filed, and within the time prescribed, to the report of the assignee, to defeat the allotment of real estate as an exemption in this case. It would be otherwise if this exception was as to the value of articles comprehended by the terms "household or kitchen furniture, or other articles of necessaries." These exceptions must be made in the way, and also in the time, prescribed. But if an attempt be made to exempt a species of property which cannot be exempted (as real estate in the district of North Carolina, which was not saved from exemption by the laws in force in 1864), then no exception need be taken to the report of the assignee making such exemptions. But creditors may except to the account of such assignee, if he omits to account for the value of such property.

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² [District not given.]