

Case No. 6,671.
[2 Dill. 92.]¹

IN RE HOOK.

Circuit Court, E. D. Missouri.

1872.

HOMESTEAD EXEMPTION STATUTE OF MISSOURI CONSTRUED—PREVIOUS DEBTS AND LIABILITIES.

The Missouri homestead-exemption statute provided that it “should not apply to any debts or liabilities contracted before” it took effect: *Held*, that where a public administrator gave an official bond and received personal property of the decedent before the homestead statute went into force, his liability to the heirs and distributees arose in such a sense as to deprive him of a homestead exemption in property acquired after he received the assets of the estate, although it did not appear that at the time the property claimed as a homestead was acquired, the administrator had then converted the assets of the estate which had come into his hands.

This cause is here under the second section of the bankrupt act to, review an order of the district court for the Eastern district of Missouri. In 1861, the bankrupt [Zadok] Hook became the public administrator for Callaway county, Missouri, and gave an official bond, with sureties, for the faithful performance of his duties. See *Hook v. Payne*, 14 Wall. [81 U. S.] 253; Same Case, 7 Wall. [74 U. S.] 425. In February, 1861, he took upon himself the administration of the estate of one Fielding Curtis, and at that time received personal property to the amount of \$75,000 belonging to the estate. Afterwards, the distributees and next of kin of the said Fielding Curtis brought suit against Hook and his sureties on the administration bond, and recovered judgment against him in this court for over \$40,000, which remains unsatisfied, and which has been proved up in bankruptcy against Hook’s estate. After the execution of the bond of Hook as public administrator, and after Hook obtained possession of the property of the estate of Fielding Curtis, but before any conversion of the property by Hook is shown to have occurred, Hook acquired the property in which he now claims a homestead right. On the 23d day of March, 1863, the Missouri homestead act was passed (Laws 1863, p. 21). This act gives a homestead right to the extent of \$1,000; and it is provided by the act itself that it “shall not apply to any debts or liabilities contracted before” it took effect, which was on the 23d day of March, 1863. In 1869, the homestead property was sold by the assignee in bankruptcy, yielding a surplus of \$2,400 after paying off the incumbrance upon it; and Hook filed in the bankruptcy court his petition for an order on the assignee to set aside and pay over to him \$1,000, as exempt to him in lieu of his homestead; and this petition was resisted by the distributees and next of kin of the said Fielding Curtis, who obtained against the bankrupt the aforesaid judgment.

Glover & Shepley and Mr. Meyers, for creditors.

W. B. Thompson and Henderson & Hayden, for bankrupt.

Before DILLON, Circuit Judge, and KREKEL, District Judge.

In re HOOK.

DILLON, Circuit Judge. We hold that the bankrupt is not entitled to the exemption; that the claim of the heirs and distributees was a liability contracted before, and in existence when, the homestead act was passed. Affirmed.

Construction of homestead exemption provisions. See *Cox v. Wilder* [Case No. 3,308], and cases cited in note.

¹ [Reported by Hon. John F. Dillon, Circuit Judge, and here reprinted by permission.]