

Case No. 7,729.

{9 N. B. R. 566.}¹

IN RE KERR ET AL.

District Court South Carolina.²

1873.

BANKRUPTCY—ASSIGNMENT OF HOMESTEAD—HOMESTEAD ACT—AFTER-
CONTRACTED DEBTS.

1. The debts of A. were mostly contracted in 1866 and 1867. and an adjudication in bankruptcy, and the assignment of a homestead was prior to the passage of the act of March 3d, 1873 [17 Stat. 577]. *Held*, that the rights of the parties in a proceeding in bankruptcy are fixed at the date of the adjudication and that, at the date of adjudication in this case no homestead in land could have been allowed, as most of the debts were contracted prior to the new constitution of South Carolina, passed in 1868, and the various acts of the legislature, passed in accordance with the provisions of that constitution.
2. Ordered, that the assignment of a homestead be vacated, and that the assignee without delay, sell the lots assigned as a homestead, after giving the usual public notice.

[In the matter of Kerr & Roach, bankrupts.]

BRYAN, District Judge. There are many points raised in this case, only a few of which need be considered, in order to reach a conclusion upon the issue before the court. The following are the admitted facts in the case: (1) The debts due the petitioners were contracted in 1866 and 1867. (2) The adjudication in bankruptcy and the assignment of homestead in land by the assignees in bankruptcy were prior to the passage of the act of the 3d March, 1873. Now without considering the question of how far congress has the power of passing laws of a retrospective effect, that affect rights already vested, I am of the opinion that the rights of the parties in a proceeding in bankruptcy are fixed at the date of the adjudication. At the date of adjudication no homestead in land could have been allowed to the bankrupts as the debts of Hutchinson and Roach, and also many other creditors had been contracted prior to the constitution of South Carolina of 1868, and the acts of the legislature passed in accordance with the provisions of that constitution. *Gunn v. Barry* [15 Wall. (82 U. S.) 610]. If no homestead could be allowed under the state laws, it follows, that neither the bankrupt act, nor the act of June, 1872 [17 Stat. 334], can give these bankrupts a homestead in land. The late decision of Bond, J. (In re Dillard [Case No. 3,912]) fully confirms these views. It is, therefore, ordered that the assignment of homestead in land be vacated; and that the assignees do, without delay, sell for cash the lots assigned as homestead, after giving the usual public notice; and that the proceeds of such sale be applied in accordance with the orders heretofore made in this case.

¹ [Reprinted by permission.]

² [District not given.]