

IN RE RUPP.

{4 N. B. R. 95 (Quarto. 25).}¹

District Court, N. D. Ohio.

1870.

BANKRUPTCY—PARTNERSHIP—JOINT
PROPERTY—EXEMPTIONS.

Joint assets are liable to the provisions of the bankrupt act [of 1867 (14 Stat. 517)], allowing exceptions. Where there are not sufficient individual assets, assignees cannot refuse to set aside exempt property out of joint property.

{Cited in Re Parks, Case No. 10,765. Cited contra in Re Blodgett, Id. 1,555; Re Handlin, Id. 6,018; Re Corbett, Id. 3,220. Cited in Re Melvin, Id. 9,406.}

In bankruptcy.

J. C. Hutchins and E. H. Ensign, for Geo. W. Rupp.

Geo. P. Hunter, for assignee.

SHERMAN, District Judge. This case comes up on exceptions to the register's report. Two questions are raised:

First. Was Samuel W. Rupp a partner in the firm of George W. Rupp & Co.? The testimony fully establishes the fact that he was a partner.

Second. Is George W. Rupp, the other partner, entitled to claim out of the partnership funds the exemption of three hundred dollars allowed by the laws of Ohio, in lieu of a homestead? This question has heretofore been before me, and I have decided it in the negative on the ground that partnership funds are in the nature of trust funds, and are not liable to the separate and personal claims of the partners, until the partnership creditors are satisfied. The question was not examined with that care that its frequency and importance demand. I have now examined it, and in view of late leading cases, have come to a different conclusion. By the common law, no exception

or homestead is secured to a debtor. They both owe their creation to late legislation, both by state and national authority. The policy of both has been adopted by almost if not all the states. The object and policy of such laws, so universally adopted, cannot be disregarded. The whole series of laws on these subjects are remedial, not restricting any prior right, but securing to an unfortunate debtor some portion from the wreck of his ¹⁶ property to save him and his family from immediate want, and to encourage him to further efforts. They have been adopted from the humane policy of the law, and dictated by the enlightened ideas of the present day, as distinguished from the severe and unhumane laws towards unfortunate debtors that prevailed at no very distant period. By them, the right of an individual debtor to the exemption is not disputed; and it certainly cannot be the policy of the law to permit the individual debtor to enjoy the exemption, while his joint liability with another would give the creditors the power to take the last cent of his property.

We find but few reported cases upon this point. In *Radcliff v. Wood*, 25 Barb. 52, the supreme court of New York, on a very similar statute with that of Ohio, held that joint ownership of property did not exclude the right; and the court of appeals, 37 N. Y. 356, say: "That the language of the act should be construed in harmony with its humane and remedial purpose. Its design was to shield the poor, and not to strip them. The interest that it assumes to protect is that belonging to the debtor, be it joint or several, absolute or limited." The United States district court in Missouri, has also decided the point. In *re Mitchell* [Case No. 9,656]. Judge Treat there says, "The policy of exemptions and the legal rules on which they rest, modify the strict technical rules by which the rights of creditors are otherwise enforceable." Such would also seem to be the policy of the bankrupt law.

By the 14th section there is saved to the bankrupt, personal property not exceeding five hundred dollars, to be excluded from the general assignment of his effects; while section 36, which refers to partnerships and corporations, makes no distinction between that class of debtors and individuals, no language being used restricting in express terms or by implication the privilege secured by section 14. For the reasons above expressed, I am of the opinion that the exemption claimed by Geo. W. Rupp, bankrupt, should be allowed from the assets of the firm of Geo. W. Rupp & Co.

¹ [Reprinted by permission.]

This volume of American Law was transcribed for use
on the Internet

through a contribution from [Google](#). 