

IN RE SHIPMAN.

{2 Hughes, 227;¹ 14 N. B. R. 570.}

Circuit Court, W. D. North Carolina. Oct., 1875.

BANKRUPTCY—EXEMPTIONS—PRIOR JUDGMENTS.

1. A bankrupt against whom judgments were rendered, before his bankruptcy, upon debts contracted prior to the adoption of the constitution of North Carolina, is not entitled to his homestead exemption under the act of congress of March 3, 1873 [17 Stat. 577], as against such judgments.

{Cited in Re Martin, Case No. 9,152;}

2. When the homestead exemption of such bankrupt has been allotted, the judgment creditors are entitled to have such allotment set aside, and their judgment liens enforced.

In bankruptcy.

BOND, Circuit Judge. This is a motion on the part of creditors to set aside an application for the allowance of a homestead exemption out of property incumbered by judgments upon debts created antecedent to the adoption of the constitution of North Carolina, which provides for that exemption. It seems to me that this application is similar to that in *Gunn v. Barry*, 15 Wall. [82 U. S.] 610. which was made under a like provision in the constitution of Georgia, and which the supreme court declared with some emphasis could not be allowed; and it is precisely the Case of *Dillard* [Case No. 3,912], decided in the Eastern district of Virginia. The act of congress of March 3, 1873, which was passed, as is maintained at bar, to overrule the decision of *Gunn v. Barry* [supra], and to make the homestead exemption paramount to the liens of antecedent judgments, was, by the same court, Chief Justice Waite delivering the opinion, in *Deckert's Case* [Case No. 3,728], declared to be unconstitutional. The application on the part of the bankrupt must be refused, and the motion to set aside granted.

¹ [Reported by Hon. Robert W. Hughes, District Judge, and here reprinted by permission.]

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