

him. As shown in this note there is great weight of authority against this view, and the case could hardly have been well considered, when the case of *Shaw v. Pratt*, (d) where the contrary opinion was expressed, was neither cited by counsel nor noticed by the court, although decided shortly before in the same forum. \* \* \*

(d) 22 Pick. 305

*In re MOYER, Bankrupt.\**

(District Court, E. D. Pennsylvania. February 27, 1883.)

**BANKRUPTCY—SECTION 5045, REV. ST.—EXEMPTION TO BANKRUPT—MISCONDUCT—LACHES.**

A bankrupt, who is a fugitive from justice, and who has failed to account to the assignee for \$5,000 and other property in his hands, has no right, after 10 years' acquiescence, to claim, under section 5045, Rev. St., an exemption out of cash in the hands of the assignee, the proceeds of property sold by him.

In Bankruptcy. Exceptions to the report of the register who allowed the claim of the bankrupt for exemption. The facts are set forth in the opinion.

*J. P. S. Gobin* and *Josiah Funk*, for exceptions of creditors and assignee.

*C. L. Lockwood* and *P. H. Reinhard*, *contra*, and for the bankrupt.

BUTLER, J. I cannot agree with the register respecting the bankrupt's claim. When the proceeding began the bankrupt had no property "exempt from levy and sale upon execution or other process, under the laws of the state," as contemplated by section 5045 of the Revised Statutes. He had fled from, and abandoned his residence in, this state—was a fugitive from justice; and has remained abroad ever since. The exemption provided for by the state statute is confined to citizens of the state, as her courts have decided. But the bankrupt, in my judgment, is not entitled to any part of his claim. If the trustee failed in duty, as alleged,—retaining and converting property to which the bankrupt was entitled,—the latter could have had redress by suit, or an order of this court in the premises. He sought no such redress, however; but for 10 years has apparently acquiesced in the trustee's conduct. The property has now passed beyond his reach, and his right of action against the trustee is barred. I was about to say that he now presents himself here to recover, not the property alleged to have been exempted, but money returned to the court for distribution, as part of the bankrupt's estate. This

\*Reported by Albert B. Guilbert, Esq., of the Philadelphia bar.

statement, however, is not accurate. He has not presented himself, either in person or by petition. The trustee, whose duty it was not, has called attention to the circumstances, and counsel for the bankrupt have pressed the claim before the register. As before suggested, the claim is not for the property, but for money, the alleged proceeds. It is, therefore, purely equitable. To this money he has no legal right. Brought into court as part of the trust estate, *prima facie*, as matter of law and in strict right, it belongs to the creditors, who alone are entitled to share in the distribution. Under similar circumstances the courts of this state would dismiss the claim without hearing—refusing to inquire into the sources from which the fund came. *Okie's Appeal*, 9 Watts & S. 156; *Mark's Appeal*, 34 Pa. St. 36; *Nyman's Appeal*, 71 Pa. St. 447.

The courts of bankruptcy have adopted a more liberal view, and allow the bankrupt to follow the proceeds of property unlawfully withheld and converted, where it is equitable to do so.

In the case before us, however, it would not be equitable to award the bankrupt any part of the fund,—granting even that his property was improperly converted. His delay, and apparent acquiescence for so long a time,—well calculated to mislead creditors,—should of itself close his mouth respecting the fund. In addition to this, however, is the important fact that while the law contemplates that the bankrupt shall be within reach, to assist, by information and otherwise, in making the most of his estate, this claimant remained away, beyond reach, to escape demands made upon him here. Still more important, I think, is the fact that within three or four months of the adjudication declaring him a bankrupt, and even a shorter time prior to the confession of bankruptcy found in the voluntary proceeding which he commenced and abandoned, he received the large sum of \$5,000 in money, in addition to the proceeds of valuable jewelry and pictures sold, no part of which was turned over to the trustee, and of which no satisfactory account, in my judgment, has been rendered. He says he paid some debts, without specifying any debts so paid; that he presented \$1,500 to his son, and gave some amount to somebody who was under obligations on his account. This is far from satisfactory; and it is hardly made less so by the general statement that he appropriated none of it to his own use. Presenting himself here as a claimant against the small sum left for creditors, it certainly is not too much to demand an account of what was done with the large sum so received; and in the absence of such an account to treat him as having carried it away. Doubtless he could

readily have told us all about it had he been within reach and been called upon to do so early in the history of this proceeding. It cannot be doubted that he was insolvent, and knew it, when this money was collected; his voluntary proceeding was commenced a very few months later. Why should he under such circumstances give away \$1,500, as he confesses he did? It belonged to his creditors.

In the light of these facts it would, in my judgment, be grossly unjust to allow him to withdraw from the creditors any part of the fund here for distribution. The report of the register must be corrected accordingly, the claim being disallowed.

### PARSONS v. COLGATE and others

(*Circuit Court, S. D. New York.* December 27, 1882)

#### 1. FIELD OF INVENTION—RESTRICTION—DESCRIPTION, HOW CONSTRUED.

If the field of invention be bounded by prior patents, though referring to the objects of the patent in issue only by general terms known in the art to which they belong to include them, the description of what the inventor undertook to cover must be construed in the light of their existence.

#### 2. SAME—FOREIGN PATENTS NOT WITHIN TERMS OF ACT OF 1836, §§ 7, 15, NOT CONSIDERED.

Foreign patents urged as anticipations of domestic patents, where the article is not properly proved to have been known or used in this country, or the patentee's circular to the trade was not a printed publication, or his provisional specification did not make the invention described in it patented, within the meaning of sections 7 and 15 of the act of 1836, will not be considered.

#### 3. RESIDUUM—NATURE—INFRINGEMENT.

A residuum is what is left after a process of separation. There are as many different residuums of a substance as there are distinct products which may be taken away from it. Showing that both residuums come from the same source, that all in the residuum of the earlier of two patents is also in and is obtained by separation from that of the patent of later date, does not make out an infringement on the former. It does not show that they are the same; otherwise a prior patent for the same use, of the common source, would cover both. The proper effect is to limit the application of "residuum."

#### 4. SAME—UNCHARRED RESIDUUM OF PETROLEUM—USE IN SOAP—PATENT No. 237,484—ANTICIPATION—VALIDITY.

Letters patent No. 237,484, for use in manufacture of soap of vaseline, produced by simmering petroleum down in open kettles, and afterwards filtering through bone-black, does not infringe letters patent No. 56,259, employing for the same purpose another uncoked residuum of petroleum so obtained by vacuum and steam process; for, while the charred and uncharred particles are always mechanically mixed, and the filtering out may be without chemical reaction, vaseline does not contain all the latter residue does; nor is it anticipated by other patents using residuums of petroleum in soaps; they confine it, however, to that particular residuum