partner a homestead exemption out of the partnership property of an insolvent firm. Let me premise that there was no separation of the property of the firm of McGruder & Condon for the purpose of the homestead exemptions before their deed was executed. The two men did not each select from the property enumerated in Schedule A the articles which he intended to appropriate as his exemption, and, by separation, make it his separate property before setting it apart. They did nothing to put an end to its character as firm property. It was out of firm property, *as such*, that they reserved their exemptions. Nay, it was out of the proceeds of the sale of firm property, when it should be sold *as such*, that they made the reservation. There was no separation. The exemption was provided for out of the sales of the property as firm property so described. The property remains to this day in the custody of the trustee as firm property. It is as firm property that the goods have come into the custody of the court. It is as firm property that we are now dealing with it. There has been no separation. This much premised, let us look into the law of Virginia relating to homesteads. The state constitution (section 1, art. 11) gives the homestead exemption to the householder or head of family "out of *his* real or personal property, or either, including money and debts due him." The statute law of the state (Code, *c.* 183, § 1) repeats the language of the constitution, and gives the exemption to the householder, etc., out of "*his* real or personal property, or either, including money and debts due *him*." The statute contains sundry other provisions in regard to real estate which do not apply to the present suit. After these it goes on to provide for cases in which exemptions of real estate have not been claimed, in whole or in part, and provides, in section 11, that in such cases the householder, etc., may select, set apart, and hold, exempt from levy, etc., so much of *his* personal property, including money, etc., as will not exceed in value $2,000, and requires that "he shall, in writing, designate the personal property so selected by him, *and each article thereof*, affixing thereto his cash valuation of each article, and shall return such writing to the clerk of the county court wherein he resides, to be recorded," etc. And section 16 of the same chapter provides that every householder, etc., who shall have failed to select and set apart a homestead and personal property as aforesaid, and who desires to avail himself of the benefit of the exemptions provided for in this act, etc., must file an inventory, under oath, in the court where the judgment, etc., is obtained, of the whole of the real and personal property *owned by him*, etc. And section 17 provides that upon such inventory, etc., being completed, the said householder, etc., may select from such inventory an amount of *such* property (that is to say, property *owned* by him) not exceeding the value of $2,000, etc.

I cite these provisions for the purpose of showing that the homestead law of Virginia gives to the individual householder or head of family an exemption *out of his own individual property*, and out of

that alone, and that it takes much pains to require that he shall separate it from his general estate. There is no provision of that law which can be construed on the most liberal principles of construction to give to the individual head of family an exemption out of property owned by others than himself. He derives this exemption exclusively from express statute. If a partner claims the exemption, he must show an express statutory grant of the right to reserve it out of partnership effects. The homestead law of Virginia will be searched in vain for such a grant; and that law not granting it, either in terms or by implication, the partner cannot reserve it. In this deed the partners make this reservation, and make it in such a way that the reserved property can come to them no otherwise than out of partnership property. Neither one of the partners can say that this was "*his property.*" Their reservation, therefore, of $4,000 for their individual benefit was illegal, was a fraud in law, and their deed was therefore null and void.

Decree accordingly.

MITCHELL TRANSP. CO. *v.* PATTERSON and others.

(*Circuit Court, W. D. Tennessee.* January 17, 1884.)

1. MARINE INSURANCE—GENERAL AVERAGE—SEPARATION OF CARGO.
   Where the captain of a sunken steam-boat reshipped a part of his cargo on another vessel, consigned to agents of his own, with instructions not to deliver to the original consignees except upon their giving a general average bond, and, having returned to the port of shipment for that purpose, did not notify the consignors, *held*, that this was evidence of his intention not to separate that portion of the cargo from the burden of the general average, and that it was liable to contribution, notwithstanding the sunken vessel, when raised, returned to the nearest port of safety for repairs, and did not again take on board that part of her cargo, and did not complete the voyage.
2. SAME SUBJECT—EXPENSES.
   The general average should include all the expenses from the disaster, not excluding those incurred for the reshipment of another part of the cargo from the port of safety first reached.

This was a case in equity by which the owners of the steam-boat Robert Mitchell sought to recover from sundry defendants their shares of a general-average expense made in endeavoring to raise the said steamer and the cargo on board. The following are the facts of the case:

The steamer Robert Mitchell, while on a trip from Cairo to New Orleans, struck some hidden obstruction in the Mississippi river at a point near Fox island, and sank. This island is about 60 miles below Memphis, Tennessee. The boat and cargo were in imminent peril of total loss. She had on board an assorted cargo of grain, flour, meal, hay, horses, oil, and about 750 bales of cotton. The latter was

upon the guards and in the engine-room of the boat. There being, at the place of disaster, no adequate means of removing or protecting the cargo, or of obtaining any assistance by telegraph or letter, the captain left the Mitchell in charge of the mate, with instructions to keep the cotton and other cargo from floating off, and to save and protect it so far as could be done, went to Memphis, and ordered the wrecking boat, then lying below St. Louis, to go at once to the Mitchell. He also found the steam-boat Choteau at the landing, loading for New Orleans, and engaged her at an agreed freight or salvage to stop on her down trip at the place of disaster, and assist in taking off the cotton and other freight stowed upon the deck, as well for the purpose of lightening the Mitchell and preparing to raise her and the remaining cargo on board, as for sending the cargo so removed forward to its destination or to a place of better security. The captain of the Mitchell accompanied the Choteau to the place of the accident, but upon arrival found the condition of things to have become more serious; and the Choteau refused to receive and transport the cotton except at an advanced freight or salvage. An agreement as to price was reached, and the master and crew of the Mitchell assisted the crew of the Choteau to unload the greater portion of the cotton, with other freight which was on the deck and in the engine-room, and place it upon the Choteau.

There was no place at or near this point where the cargo thus removed to the Choteau could be protected and saved from further loss so well or cheaply as by sending it on to New Orleans, the port of destination. The captain of the Mitchell shipped it all in his own name to an agent selected by him in New Orleans, with instructions to deliver it to the consignees upon their signing an average bond. Upon its arrival in New Orleans the underwriters of the cotton obtained possession of it upon the payment of the Choteau's freight, without giving any average bond, they claiming that it was not a case for a general average. This cotton and other cargo received by the Choteau and forwarded to New Orleans did not require for its removal and protection the aid of the wrecking boat, but it was protected upon the Mitchell by her own officers and crew, who assisted the crew of the Choteau in removing it from the Mitchell and placing it upon the Choteau. The wrecking boat was in the mean time on its way to the Mitchell, but did not arrive there until after the Choteau left with the cotton in question. It did, however, arrive at the Mitchell and had commenced efforts to raise her and the remaining cargo several days before the Choteau arrived at New Orleans. The cotton in question was delivered to the agent appointed by the captain of the Mitchell, and before the same came to the underwriters of the cotton.

In the raising of the Mitchell difficulties not anticipated were encountered, and portions of the boat had to be cut away. The value of the boat and remaining cargo raised was but about one-third the value of the boat and cargo, including the cotton in question. The freight-