

In re SUGENHEIMER.

(District Court, S. D. New York. January 9, 1899.)

**BANKRUPTCY—PROOF OF CLAIMS—FOREIGN CONSUL—POWER OF ATTORNEY—
SUPREME COURT RULES.**

In view of the provision of section 20 of the bankrupt act of 1898, allowing oaths to be administered by diplomatic or consular officers in any foreign country, *held*, that an acknowledgment of a power of attorney before a foreign consul was sufficient to authorize the proof of the creditor's claim before the referee; rule 21 of the supreme court (18 Sup. Ct. vii.) not apparently contemplating such a case; *held* also that a power duly executed to either of three persons as substitutes, but acknowledged before one of them, might be lawfully executed by either of the other two.

In Bankruptcy.

F. W. & A. E. Hinrichs, for George C. Mecke & Co.

BROWN, District Judge. The referee in charge has certified to the court for decision the question whether certain powers of attorney had been properly executed so as to allow a vote by proxy upon a claim of the firm of George C. Mecke & Co. of Bremen, Germany, against the bankrupt. The creditor firm executed before the United States consul at Bremen on February 12, 1897, a very broad power of attorney, which I find was sufficient to authorize proof of their claim in bankruptcy, and a vote in the bankruptcy proceedings, either by the attorneys, or by their substitutes, if the powers were properly executed.

It is objected that rule 21 of the supreme court in bankruptcy (18 Sup. Ct. vii.) subd. 5, provides only that "the execution of any letter of attorney to represent a creditor * * * may be proved or acknowledged before a referee or a United States commissioner, or a notary public," but does not admit proof or acknowledgment before a foreign consul.

The language of the rule, it will be observed, is not exclusive, and the different clauses taken together seem to indicate that the proof of claims of foreign creditors was not within the contemplation of the court in framing this part of the twenty-first rule. Section 20 of the act of congress, provides that "oaths" required by the act may be administered "* * * (3) by diplomatic or consular officers of the United States in any foreign country." It is hardly to be supposed that the court could have intended to exclude the proof of foreign letters of attorney before such officers as United States consuls, when these are expressly empowered by the act to administer oaths in bankruptcy proceedings. I therefore decide that the acknowledgment of this power of attorney was sufficient.

2. Mecke & Co. of New York, the attorneys named in the above power of attorney, by Hugo Volkening, one of its members, executed on December 28, 1898, in New York, a letter of attorney appointing three substitutes to vote at creditors' meetings as proxies for the Bremen firm, and acknowledged it before E. A. Pfeffer, one of the substitutes. This power authorizes the three substitutes or "either one of them" to vote at creditors' meetings upon the claim of the

Bremen firm. I think the acknowledgment before Pfeffer was irregular as respects him. I see no reason, however, why it should not be valid as respects either of the others, so that either of the other two substitutes may lawfully act under it.

Ordered accordingly.

In re CAMP et al.

(District Court, N. D. Georgia. February 9, 1899.)

1. **BANKRUPTCY—EXEMPTIONS—SETTING APART BY TRUSTEE.**

Under Bankruptcy Act 1898, § 47, it is the duty of the trustee to set apart the bankrupt's exemptions as soon as practicable after his appointment, without waiting until such exemptions shall have been allowed and set apart by state officers, according to the procedure prescribed by the laws of the state.

2. **SAME—PARTNERSHIP ASSETS.**

In Georgia, in case of the bankruptcy of a firm, a partner who has no individual property is entitled to exemptions out of the partnership assets, provided he has an interest in such assets to the amount and extent of the exemption claimed, although the firm property is not sufficient to pay the firm debts.

3. **SAME—FOLLOWING STATE DECISIONS.**

On the question of the right of a partner to have set apart to him, out of the partnership assets, the exemptions allowed by the law of the state, the federal court, sitting in bankruptcy, will follow the rule settled and established by the decisions of the supreme court of the state.

4. **SAME—JURISDICTION OF EXEMPT PROPERTY.**

When the bankrupt's exemptions have been set apart by the trustee, and his action thereon approved by the bankruptcy court, that court has no further control over the exempt property, and will not retain jurisdiction over it for the purpose of enforcing the rights of a creditor holding a note in which the bankrupt has waived his rights of homestead and exemption.

In Bankruptcy. On exceptions to ruling of referee in the bankruptcy of H. A. & B. T. Camp.

Alex. & Victor Smith and Maddox & Terrell, for petitioning creditors.

H. A. Hall, for bankrupts.

NEWMAN, District Judge. The trustee in this case set apart to B. T. Camp, one of the above-named bankrupt firm, out of the partnership personal property, certain articles valued at the amount allowed by the state exemption laws as his exemption under the provisions of the bankrupt law. This action was approved by the referee. Exceptions were filed to the action of the referee, and the matter is brought before the district court for determination. Several questions are involved, and must be determined before a proper disposition of this matter can be reached.

The first question is as to whether the exemption allowed by section 6 of the bankrupt act is to be set apart by the trustee originally, or whether it must have been first set apart, in this state at least, in accordance with the provisions of the state law, by the ordinary of the county. While this question might be one of some difficulty under section 6 of the bankrupt act, which provides that "this act