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by counsel: On consideration whereof, it is ordered, adjudged and decreed by this court, that the decree of the said circuit court in this cause be and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said circuit court, with directions to dismiss the bill of review in this cause.

*271] *UNITED STATES, Plaintiffs in error, v. ANDREW HACK, THOMAS SEWALL and JAMES WILKES, JR., Assignees of JOHN STOUFFER.

Priority of the United States.—Partnership.

The priority of the United States does not extend so as to take the property of a partner from partnership effects, to pay a separate debt, due by such partner to the United States, when the partnership effects are not sufficient to satisfy the creditors of the partnership.¹

It is a rule too well settled to be now called in question, that the interest of each partner in the partnership property, is his share in the surplus, after the partnership debts are paid; and that surplus, only, is liable for the separate debts of such partner.

ERROR to the Circuit Court of Maryland. The United States instituted an action of *assumpsit* against the defendants, in the circuit court of the United States for the district of Maryland. The defendants pleaded *non assumpsit*, and the case was submitted to the court by the counsel for the plaintiffs and the defendants, on the following statement of facts agreed:

"It is agreed between the parties in this case, by their counsel, that John Stouffer is largely indebted to the plaintiffs on sundry judgments rendered against him on custom-house bonds; that the said John Stouffer was, at the date of the said bonds, and of the rendition of the said judgments, a partner in trade with his brother Jacob Stouffer, and so continued until the execution of the deed of trust hereinafter referred to; that the said John and Jacob Stouffer becoming embarrassed and insolvent in their affairs, on the 19th day of May 1832, executed a deed of trust to and in favor of the defendants, of all their joint and partnership property, for the benefit of their joint and partnership creditors, having no private or undivided estate; that the said property is not sufficient for the payment of all said creditors, but that the said John Stouffer's undivided half, now in the possession of the said trustees, amounts to \$974.71. It is also agreed, that the amount of the unsatisfied judgments of the United States against

*272] the said John Stouffer is, at *this date, \$2100, and upwards, after exhausting his private and individual estate. And the amount now in the possession of the aforesaid trustees, being the proceeds of the said partnership estate, is \$1942.42, one-half of which is \$974.71. Upon the foregoing statement of facts, the district-attorney contends, that the plaintiffs are entitled to receive from the defendants the sum of \$974.71, being the proceeds of John Stouffer's undivided half of, in and to the aforesaid partnership estate, to be applied to the satisfaction of the aforesaid judgments recovered against the said John Stouffer. The counsel for the defendants contends, that the plaintiffs are not entitled to receive anything from the defendants in this action, on the ground, that the money in their hands is the proceeds of partnership property, the whole of which is inadequate to

¹ United States v. Duncan, 4 McLean 607; United States v. Evans, Crabbe 60; Ex parte Webb, 2 Bank. Reg. 183.

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the entire payment of the partnership debts ; and that the plaintiffs are creditors of John Stouffer only, and not of the said partners. The question submitted to this court is, whether the plaintiffs are entitled to recover from the defendants in this case the said sum of \$974.71, being one-half of the aforesaid partnership estate. It is finally agreed, that all errors in pleading be mutually released, and that either party shall have the privilege of prosecuting a writ of error to the supreme court of the United States."

The circuit court gave judgment for the defendants ; and the United States prosecuted this writ of error. The case was argued by the Attorney-General for the United States. No counsel appeared to argue the cause for the defendants.

For the United States, the *Attorney-General* contended, that under the provisions of the acts of congress, the United States, as judgment-creditors of John Stouffer, were entitled to be first paid to the extent of his share of the property assigned to the defendants, in preference to the creditors of the partnership ; and that the judgments of the court below ought, therefore, to be reversed. The attorney-general conceded, that by the general law of *partnership, both in the United States and in England, the property [273 of the partnership was first liable to the debts of the firm ; and although an execution may go against such effects, in favor of a separate creditor of one of the partners, yet the purchaser under such proceedings, could only take the property of the partner, subject to such debts. He referred to the authorities on this point in the reports of cases decided in the United States. 1 Gallis. 367 ; Pet. C. C. 460 ; *Matter of Smith*, 16 Johns. 102, and the cases in the notes ; 15 Mass. 82 ; 1 Wend. 311 ; 2 Ibid. This being the general law of partnership, and this court having decided in the case of *Conard v. Atlantic Insurance Company*, 1 Pet. 389, that the priority of the United States does not divest anterior liens, the foundation of the claim of the United States in this case can rest only on the local law of Maryland. The case of *Wallace v. Patterson*, 2 Har. & McHen. 463, arose under the act of the legislature of Maryland, and was decided in 1790. That act is now in force. The act was passed in 1715, ch. 4, of the laws of that year, and it authorizes a debtor to pursue the property of his creditor wherever it may be found. If, in the state of Maryland, a debtor may proceed under this law against partnership property, may not the United States ? No case entirely applicable to the case before the court, has been found in the Maryland reports. In a case where the private property of the parties had gone into the partnership effects, would not the rights of the creditors be equal ? Suppose, an importation of goods liable to duties had been passed over to a partnership, would not the United States have a right to call on the partnership for the unpaid duties ?

The attorney-general stated that he had found this case on the docket of the court ; and had felt himself bound to submit it for decision, with these remarks.

THOMPSON, Justice, delivered the opinion of the court.—This cause comes up on a writ of error, from the circuit court of the United States for the district of Maryland. The action in the circuit court was, for the recovery of a sum of money, which came into the hands of the defendants, as *assignees of John and Jacob Stouffer, who were partners in [274

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had become insolvent. The material facts in the case, as agreed between the parties, are :

That John Stouffer, one of the partners, is largely indebted to the United States on sundry judgments rendered against him on custom-house bonds. That at the date of said bonds, and at the time of the rendition of the judgments, he was a partner in trade with Jacob Stouffer, and so continued until the 19th day of May 1832, when they became embarrassed and insolvent, and executed a deed of trust, to and in favor of the defendants, for all their joint and partnership property, for the benefit of their joint and partnership creditors, they having no private or individual estate. The property then assigned, is not sufficient to pay the partnership creditors ; but the undivided half of John Stouffer, now in the possession of the defendants, amounts to \$974.71.

Upon this state of facts, the question submitted to the circuit court was, whether the United States were entitled to recover from the defendants the sum of \$974.71, being John Stouffer's half of the proceeds of the partnership estate. Upon which the court gave judgment for the defendants.

It is claimed, on the part of the plaintiffs in error, that, under the provisions of the acts of congress, the United States, as judgment-creditors of John Stouffer, are entitled to be first paid, to the extent of his share of the property assigned to the defendants, in preference to the creditors of the partnership. The act of congress, § 65 (1 U. S. Stat. 676), declares, that when any bond for the payment of duties shall not be satisfied on the day it becomes due, the collector shall forthwith cause a prosecution to be commenced, &c. And in all cases of insolvency, or where any estate, in the hands of the executors, administrators or assignees, shall be insufficient to pay all the debts due from the deceased, the debt or debts due from the United States on such bonds, shall be first satisfied, &c.

The construction of this clause of the act of congress has frequently come under the consideration of this court, although not under the circumstances in which it is now presented. It was held, at an early day, in the case of the *United States v. *Fisher*, 2 Cranch 358, in the construction *275] of a similar clause in the act of 3d March 1797, ch. 74, that no *lien* is created by this law. No *bond fide* transfer of property, in the ordinary course of business, is overreached. And in a late case of *Conard v. Atlantic Insurance Company*, 1 Pet. 439 ; this question received a very full examination, and explanation of some former decisions which seem not to have been fully understood. And in the course of which it is observed : "What then is the nature of the privity thus limited and established in favor of the United States ? Is it a right which supersedes and overrules the assignment of the debtor, as to any property which the United States may afterwards elect to take in execution, so as to prevent such property from passing, by virtue of such assignment, to the assignee ? Or is it a mere right of prior payment, out of the general funds of the debtor, in the hands of the assignee ? We are of opinion, that it clearly falls within the latter description."

If, then, the debt of the United is not a *lien*, but only entitled to priority of payment out of the general funds of the debtor, in the hands of the assignee, what are the funds out of which this priority is set up in the present case ? They are not the funds of John Stouffer, the debtor of the

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United States, but of John & Jacob Stouffer, who have become insolvent, having no separate property ; and the partnership property is insufficient to satisfy the partnership creditors. It is a rule too well settled to be now called in question, that the interest of each partner in the partnership property, is his share in the surplus, after the partnership debts are paid ; and that surplus only is liable for the separate debts of such partner. And this is the rule in the exchequer in England, with respect to debts due to the crown. In the case of *The King v. Sanderson*, 1 Wightwick 50, it was held, that upon an extent against one partner, the crown, like a separate private creditor, took the separate interest of the partner, subject to the partnership debts.

It has been a question very much litigated in England, and in this country, both in the courts of law and equity, as to the manner in which the separate creditor of one partner was to avail himself of the share of such partner in the joint property of the firm, where the partnership is solvent. But whatever course is adopted, it is the interest only of the separate partner that is taken, and always subject to the rights [*276 of the partnership creditors. 16 Johns. 106, and cases in note ; 2 Johns. Ch. 548 ; 4 Ibid. 525. But that question does not arise here, as it is admitted, that the partnership property is insufficient to pay the partnership debts. We entertain no doubt, therefore, that the United States are not entitled to recover the \$974.71. The judgment of the circuit court is accordingly affirmed.

This cause came on to be heard, on the transcript of the record from the circuit court of the United States for the district of Maryland, and was argued by counsel : On consideration whereof, it is ordered and adjudged by this court, that the judgment of the said circuit court in this cause be and the same is hereby affirmed.

*UNITED STATES, Appellants, v. ONE HUNDRED AND TWELVE CASKS [*277 OF SUGAR: NATHAN GOODALE, Claimant.

Entry of merchandise.

A seizure was made in the port of New Orleans, under the 67th section of the act of 1799, for the collection of duties (1 U. S. Stat. 677), which authorizes the collector, where he shall suspect a false and fraudulent entry to have been made of any goods, wares or merchandises, to cause an examination to be made, and if found to differ from the entry, the merchandise is declared to be forfeited, unless it shall be made to appear to the collector, or to the court in which a prosecution for the forfeiture shall be had, that such difference proceeded from accident or mistake, and not from an intention to defraud the revenue. After hearing the testimony offered in the cause, the court decreed and ordered, that the property seized be restored to the claimant, upon the payment of a duty of fifteen per cent. *ad valorem* ; that the libel be dismissed, and that probable cause of seizure be certified of record ; the United States appealed from this decree.

The court not being able to decide from the evidence sent up with the record, that the article, in point of fact, differs from the entry at the custom-house, affirmed the decree of the court below. The denomination of merchandise, subject to the payment of duties, is to be understood in a commercial sense, although it may not be scientifically correct ; all laws regulating the payment of duties are for practical application to commercial operations, and are to be understood