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Statement of the case in the opinion.

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## GLENN ET AL. v. JOHNSON ET AL.

The personal acquisitions of a wife, in Georgia, being by statute of that State not subject to the debts of her husband, her separate earnings from her individual labor and business, carried on with his consent, cannot be reached by his assignees in bankruptcy.

APPEAL from the District Court for the Northern District of Georgia.

Glenn and another, assignees in bankruptcy of George Johnson, who, in 1868, in proceedings instituted on his own petition, had been declared a bankrupt by the District Court of Georgia, filed a bill in the court below against the said George, his wife, and a certain Flynn, trustee of the wife, to reach certain real property situated in the city of Atlanta, standing in the name of Flynn, as such trustee, and to subject it to the payment of his debts.

The court below dismissed the bill, and the assignees of the bankrupt took this appeal.

*Messrs. E. N. Broyles and R. Arnold, for the appellants; no opposing counsel.*

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Mr. Justice FIELD stated the facts of the case, and delivered the opinion of the court, as follows:

It appears that in July, 1863, one Thomas S. Powell conveyed to the trustee the property in question, for the alleged consideration of four thousand dollars; and that subsequently, in 1867, buildings and other improvements were placed upon the property to the value of two thousand dollars. The deed recites that the consideration was paid by Mrs. Johnson, and declares that the property is conveyed to the trustee in trust for her sole and separate use, and is not to be liable for the debts or contracts of her husband.

The bill alleges, upon the belief of the complainants, that the consideration was paid, and the improvements were made, out of the funds of the husband, who, at the time the

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property was purchased, was greatly embarrassed by debts, and at the time the improvements were made was wholly insolvent. It, therefore, charges that the conveyance to the wife and the improvements upon the property were made in fraud of the creditors of the husband, and prays that the conveyance may be declared fraudulent, and the property decreed to be sold and the proceeds administered by the complainants under the provisions of the Bankrupt Act; or, if the conveyance be not thus declared fraudulent, that the property be sold and the proceeds, to the extent of the value of the improvements, be thus administered.

The husband, the wife, and the trustee separately answered the bill, and all averred, the husband and wife positively, and the trustee upon information and belief, that the consideration of the conveyance and the cost of the improvements were paid out of the earnings of the wife from her individual labor and business carried on with the consent of her husband. The answers are under oath, and their averments in this particular were subsequently sustained by the testimony of the parties as well as by the testimony of other persons.

The position of the complainants that this fact constitutes no defence to the suit, would be a sound one if the case were to be determined independently of the statute of Georgia. At common law, an agreement after marriage between husband and wife that the latter may carry on business on her own account and retain her earnings, is invalid as against his creditors, unless founded upon a valuable consideration; a voluntary agreement to that effect is only good as against him.\*

But the statute of Georgia comes to the aid of the wife and protects her separate earnings from his creditors. Section 1702, of the code of that State, whilst providing that all property given to the wife during the coverture, or acquired by her, shall vest in the husband, declares that "any words

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\* 2 Story's Equity, §§ 1385-1387.

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in the gift or bequest indicating a wish for the personal enjoyment thereof by the wife, such as a gift to the wife by name, shall create a separate estate therein for her, and in no case shall the personal acquisitions of the wife be subject to the debts of the husband.”\*

The earnings of the wife are thus placed beyond the reach of his creditors and of course of his assignees in bankruptcy.

DECREE AFFIRMED.

## STEAMBOAT COMPANY v. THE COLLECTOR.

1. Under the ninth section of the act of July 13th, 1866, laying on the owners of steamboats a tax of “ $2\frac{1}{2}$  per cent. of the *gross receipts from passengers*,” the owners of a night-boat which receives a certain sum for the mere transportation of persons (that is to say, for their passage, or barely being on the boat during its transit), and also a certain sum for the use of berths and state-rooms (which berths and state-rooms it was not obligatory on the passengers to take, or pay for, and which persons who were willing to sit up all night did not take), is chargeable with  $2\frac{1}{2}$  per centum on the latter sort of receipts as well as on the former.
2. A proviso to an existing act, *held* to have been repealed by an act which “*amended*” the former act, “by striking out all after the enacting clause and inserting in lieu thereof, the following;” this “following” being in part an iteration of the words of the section amended, and in part new enactments.
3. The proviso in the fourth section of the act of March 3d, 1865, exempting a certain class of steamboats from a tax of  $2\frac{1}{2}$  per cent., which was laid on all steamboats by the one hundred and third section of the act of June 30th, 1864, fell by the enactment of the ninth section of the act of July 13th, 1866, which “amended the first-named act by striking out all after the enacting clause and inserting in lieu thereof the following;” this “following” being in part an iteration of the words of the section of the act of June 30th, 1864, amended, and in part new enactments.

ERROR to the Circuit Court for the Southern District of New York.

The New Jersey Steamboat Company had a night-line of steamboats which ran between New York and Albany, and

\* Code of Georgia in force in 1863, p. 338, §§ 1701-2.