

Matter of Harris

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Court : US Supreme Court

Decided On : May-15-1911

Appeal No. : 221 U.S. 274

Appellant : Matter of Harris

Judgement :

Matter of Harris - 221 U.S. 274 (1911)

U.S. Supreme Court Matter of Harris, 221 U.S. 274 (1911)

Matter of Harris

No. 165

Argued April 28, 1911

Decided May 15, 1911

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CERTIFICATE FROM THE CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT

SYLLABUS

The right under the Fifth Amendment not to be compelled to be a witness against oneself is not a right to appropriate property that may tell one's story.

A bankrupt is not deprived of his constitutional right not to testify against himself by an order requiring him to surrender his books to the duly authorized receiver. *Counselman v. Hitchcock*, [142 U. S. 547](#) , distinguished.

Under 2 of the Act of 1898, where the bankruptcy court can enforce title against the bankrupt in favor of the trustee, it can enforce possession *ad interim* in favor of the receiver, and so *held* as to books of the bankrupt.

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The facts are stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

In this case, the district court made an order that the bankrupt should deposit his books of account in the office of the receiver, there to remain in the custody of bankrupt, the latter to afford the receiver free opportunity to inspect the same, but the receiver to use and to permit them to be used only for the purpose of the civil administration of the estate, and not for any criminal proceeding. It was ordered further that in case of subpoena or other process to the receiver for their production, he should notify the bankrupt, to the end that the bankrupt might have an opportunity to raise the question of his constitutional privilege. The bankrupt petitioned the circuit court of appeals to revise the order. It appears that he made to a commercial

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agency a written statement of his assets and liabilities January 4, 1908, but he declined to testify concerning it, as it might tend to criminate him, several creditors having threatened him with prosecution for having obtained merchandise from

them by that means. He also made oath that the books contained evidence that might tend to incriminate him, which was confirmed by an affidavit of his attorney. The receiver desired the books in order to ascertain what disposition was made of the assets alleged in the statement to the agency. On the other side, the bankrupt was willing to allow an inspection if he could save his right that the books should not be used against him in a criminal trial, but he excepted to the order on the ground that no statute protected him from the knowledge gained from the books being used to find and get evidence that might be used against him in a criminal prosecution. He relied upon the Fifth Amendment and *Counselman v. Hitchcock*, [142 U. S. 547](#) . The circuit court of appeals certifies the question whether the order was a proper exercise of the authority of the bankruptcy court.

If the order to the bankrupt, standing alone, infringed his constitutional rights, it might be true that the provisions intended to save them would be inadequate, and that nothing short of statutory immunity would suffice. But no constitutional rights are touched. The question is not of testimony, but of surrender, not of compelling the bankrupt to be a witness against himself in a criminal case, present or future, but of compelling him to yield possession of property that he no longer is entitled to keep. If a trustee had been appointed, the title to the books would have vested in him by the express terms of 70, and the bankrupt could not have withheld possession of what he no longer owned on the ground that otherwise he might be punished. That is one of the misfortunes of bankruptcy if it follows crime. The right not to be compelled to be a witness against oneself is not a right to appropriate property

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that may tell one's story. As the bankruptcy court could have enforced title in favor of the trustee, it could enforce possession *ad interim* in favor of the receiver. 2. In the properly careful provision to protect him from use of the books in aid of prosecution, the bankrupt got all that he could ask. The question certified is answered

"Yes."

