

THE CONSTITUTIONALITY OF THE CONCLUDING EXEMPTION
CLAUSE IN THE BANKRUPT ACT.¹

A WRITER in the October number of the Register, over the signature of S. E. B., argues that the provision of the Bankrupt Law which adopts the exemptions made by the laws of the respective states, is void for want of uniformity.

But I venture to suggest that he has overlooked the proviso which is attached to this provision:—

“ Provided that the foregoing exception shall operate as a limitation upon the conveyance of the property of the bankrupt to his assignees, and in no case shall the property hereby excepted pass to the assignees, or the title of the bankrupt thereto be impaired or affected by any of the provisions of this act.”

When the effect of this proviso is considered, it is obvious that if that part of the law which it qualifies is pronounced unconstitutional, “ the other and principal provisions of the law would, without doubt,” fall with it.

The authority cited, 2 Gray 98, lays down the rule, “ When the parts of the statute are so mutually connected and dependent as conditions, considerations, or compensations for each other as to warrant a belief that the legislature intended them as a whole, and that if all could not be carried into effect the legislature would not pass the residue independently, if some parts are unconstitutional and void all the provisions which are thus dependent, conditional, or connected must fall with them.”

The proviso referred to was drawn with the distinct purpose of bringing the law within this rule, so that if the state exemptions clause should be held void the whole law would fall with it.

The passing title of the bankrupt's property to the assignee is one of the two great objects which the law has in view, the other is the bankrupt's discharge. If either of these objects cannot be effected all the other parts of the law must fail, because their only office is to effectuate these two objects. Now the language of the proviso is that the title of the bankrupt to the excepted property shall not pass to the assignee nor be impaired or affected “ *by any of the provisions of this act.*”

¹ On the principle of hearing both sides, but without intending to get into any controversy, we give place to the following communication on a subject just now of prominent interest to the profession.—EDS. AM. LAW REG.