

debtor may in fact have a right to a surplus after payment of firm debts, and such an interest he would of course be entitled to hold exempt under the exemption laws of his State as against individual creditors, the same as any other specific property belonging to him; but it cannot be held, until it has been first reduced so far to his possession, that it may be specifically identified as his.

W. L. STONEX.

LOCAL OPTION — A REJOINDER TO CHARLES R. GRANT.

Inasmuch as Mr. Grant has published in this journal¹ what is termed a "Reply to Henry Wade Rogers," it may not be improper for me to file my "Rejoinder" thereto, and to embody therein the following statement of facts, with which I take final leave of this subject.

1. Mr. Grant's first article was entitled, not the Constitutionality of Local Option in Ohio, as might be inferred from his "reply," but rather the Constitutionality of Local Option Laws. To be sure, Mr. Grant in his article considered the constitutionality of local option in Ohio, but he also considered the constitutionality of local option laws in general, as the title of his article indicated. His conclusion, that local option in Ohio was unconstitutional, was based not merely upon the provision of the Constitution of that State, that no act should be passed "to take effect upon the approval of any other authority than the General Assembly." If it had been, I certainly should not have taken issue with him. And most certainly I should not have done so without, at least, "alluding" to the fact that there was such a thing as a Constitution in Ohio, and that it contained such a provision, and that my explanation of it was so and so. For ignorant of the provision I could not have been, as he had set it forth explicitly in his article.

2. My article, which he seems to have supposed to be on the constitutionality of local option in Ohio, was entitled generally, as his article had been: "The Constitutionality of Local Option Laws," and was upon that sub-

ject, and not upon the other. I did not deal at all with that branch of his argument which related to the constitutionality of local option in Ohio; but as he had reviewed the cases and come to the conclusion that "the decided weight of judicial authority" was "overwhelmingly" against local option, not in Ohio merely, but in general, I took leave to respectfully "doubt" the soundness of that conclusion. I dealt with the subject of local option in general, and not in particular as confined to Ohio, and the conclusion reached was expressed as follows: "The conclusion is irresistible, that a local-option law is by no means an unconstitutional measure; that the late decisions must be regarded as having definitely decided the question, that such laws are to be upheld by the courts." In that conclusion I was fortified by decisions from able courts—those of Massachusetts, New Jersey, Maryland, Connecticut, Pennsylvania, Minnesota and Indiana. To these I now add the case of *Anderson v. Commonwealth*,² decided by the Supreme Court of Kentucky, and I will add that it is a "recent" decision, being rendered in 1877, "decided later, by a year, than any cited by him" (Mr. Grant), including his stock-law case cited from Missouri. I was also fortified by the opinion of Mr. Justice Cooley, expressed in his *Constitutional Limitations*, to the effect that "the clear weight of authority is in support of legislation of this nature, commonly known as local-option laws."

3. In his "reply," Mr. Grant confines his attention to "Local Option in Ohio," and shows that the cases cited by me are not pertinent to that subject. I can only add that I fully agree with him on that point, and that I never have entertained a contrary opinion. I have no doubt that the law urged upon the legislature of Ohio was an unconstitutional measure. I have no less doubt that "the decided weight of judicial authority" is not "overwhelmingly" opposed, but, on the contrary, is "overwhelmingly," or rather, "irresistibly" in favor of legislation known as local-option laws.

HENRY WADE ROGERS.

² 13 Bush, 485.

¹ 12 Cent. L. J. 314.