

## UNITED STATES v. SPIEL, Adm'r, etc.

(District Court, D. Minnesota. August 15, 1881.)

## 1. STATUTES OF LIMITATIONS.

State statutes of limitations do not run against claims of the United States.

## 2. GEN. ST. MINN. c. 77, § 1, AND c. 53, § 19—JOINT JUDGMENTS.

By chapters 77, § 1, and 53, § 19, Gen. St. Minn., a joint judgment against the deceased and others, obtained during his life-time, may, upon his death, be prosecuted against his representative alone.

## Demurrer to Complaint.

*H. F. Masterson*, for demurrer.

*W. W. Billson*, U. S. Att'y, *contra*.

NELSON, D. J. This suit is brought upon a judgment obtained against David Rohrer, administrator of the estate of Henry Tilden, deceased, J. C. Ramsey, Benjamin F. Hoyt, Louis Roberts, James McBoal, D. F. Brawley, David L. Fuller, and B. W. Brunson, January 5, 1857. The administrator of J. C. Ramsey alone is now sued, and a demurrer is interposed by him to the complaint. The questions in the case raised on the demurrer are whether the action can be maintained against the representative of the deceased debtor alone; and, further, is the action barred by the statutes of Minnesota limiting the time when actions upon judgments can be brought to 10 years? The judgment was rendered against all the parties above named, and in the complaint appears to be a joint one. In my opinion (1) the statute of limitations of the state of Minnesota does not run against the United States whether the claim rests in judgment or not; (2) by the common law, on the death of Ramsey the suit upon the judgment could be brought only against the survivors.

By the statutes of Minnesota (see chapter 77, § 1, and chapter 53, § 19, Gen. St. Minn.) the estate of Ramsey is liable; and, although the judgment is joint, the liability is the same as if the judgment had been against him alone. Again, the judgment against the administrator of Ramsey would be *de bonis testatoris*, while against the surviving joint debtors it should be *de bonis propriis*. It would seem to follow, then, that the action must be brought against the administrator of Ramsey separately, and he cannot be joined with the surviving obligors. It is unnecessary, however, to go to this extent to sustain the complaint in this action, for the liability of the estate is fixed by the statute.

Demurrer overruled, with leave to answer in 20 days.

NEILL *v.* JACKSON and another.

(District Court, W. D. Pennsylvania. —, 1881.)

## 1. DECREE—ATTACKING COLLATERALLY.

The decree of a district court of the United States, upon a bill in equity filed by an assignee in bankruptcy against an assignee under the bankrupt's deed of voluntary assignment, requiring the latter to deliver to the former assets of the bankrupt, is conclusive in all collateral proceedings.

## 2. ASSIGNEE—WHEN PROTECTED.

The voluntary assignee is entitled to the protection of such decree, notwithstanding, by consent of the parties, he withdrew his appeal therefrom, and by the like consent the district court modified its decree, it appearing that he acted in good faith and under the advice of counsel.

## 3. SAME—ACCOUNTING.

But the modified decree having excepted from the order directing the delivery of the assets to the assignee in bankruptcy certain moneys which the voluntary assignee had collected and claimed to have disbursed under the deed of voluntary assignment, *held*, that to the extent of the excepted fund he might be compelled to settle an account of his trust in the state court having jurisdiction thereof.

*S. T. Neill*, for complainant.

*John J. Henderson*, for respondent.

In Equity. *Sur* application for injunction to restrain the defendants from proceeding in the court of common pleas of Crawford county, Pennsylvania, to compel Joseph A. Neill to settle an account as trustee under a deed of voluntary assignment, etc.

ACHESON, D. J. I agree with the learned counsel of the complainant as to the conclusive effect of the decree of this court (made by the late Judge Ketcham) in the case of William H. Abbott, assignee in bankruptcy of the Titusville Savings Bank, against Joseph A. Neill, in so far as that decree operated upon the assets of the bankrupts by requiring the delivery thereof to the assignee in bankruptcy. No opinion having been filed by Judge Ketcham, the ground of his decision does not certainly appear. It is enough, however, that a decree was made by a court having jurisdiction of the parties and subject-matter of the suit, and that the decree stands in force. It is true that, by consent of the parties, an appeal from said decree, which the complainant, Neill, had taken to the circuit court, was subsequently withdrawn, and thereupon this court, by and with the like consent, modified its decree. But it seems to me that the complainant was not thereby deprived of the protection of the decree. There is nothing to suggest bad faith on his part in withdrawing his appeal, and he was acting under the advice of counsel learned in the law. *Bradley's*