

not operate to keep alive the obligation as to a co-surety who was not privy to it, or in no way participated in it. Probate Judge v. Stevenson, (Mich.) 21 N. W. Rep. 348.

(d) *Part Payment by Assignee for Benefit of Creditors.* A. being indebted to B. for wages, made an assignment for benefit of creditors, and the assignee paid B. several small sums at various times on account, and finally gave him a check for \$4.83, "to be applied as final dividend" on his claim against A. The claim became barred by the statute of limitations before B. sued to recover the balance due. *Held*, that the payments by the assignee did not keep the claim alive, and that B. could not recover. Parsons v. Clark, (Mich.) 26 N. W. Rep. 656.

It is held by the supreme court of Nebraska, Clark v. Chambers, 22 N. W. Rep. 229, that the payment of a dividend by the assignee of an insolvent debtor is not such a part payment of a debt, barred by the statute of limitations, as to take the remainder out of the statutory limitation as against the debtor; citing Marienthal v. Mosler, 16 Ohio St. 566; Stoddard v. Doane, 7 Gray, 387; Pickett v. King, 34 Barb. 193; Roosevelt v. Mark, 6 Johns. Ch. 266.

In Letson v. Kenyon, (Kan.) 1 Pac. Rep. 562, where the maker of a note thereafter made an assignment for the benefit of creditors, and in such assignment scheduled this note and directed his assignee to convert the assigned property into money and pay his debts, and in pursuance thereof the assignee took possession and converted said property into money, and applied the same in part payment of the assignor's debts, this note among the number, it was held that the payment, being one made in pursuance of express directions from the assignor for his benefit, and out of the proceeds of his property, is such a payment as avoids the bar of the statute of limitations under the Kansas statute; and this, notwithstanding the proceedings under the assignment are controlled by the provision of a general statute concerning assignments for the benefit of creditors. The court cite Jackson v. Fairbank, 2 H. Bl. 340; Barger v. Durvin, 22 Barb. 68.

WIGTON v. BRAINERD.

(Circuit Court, D. Vermont. July 8, 1886.)

COSTS—FAILURE OF PROSECUTION—DISMISSAL—DOCKET FEE.

Where a suit is dismissed for want of prosecution, a docket fee to the defendant is not taxable.

In Equity.

No appearance for plaintiff.

Guy C. Noble, for defendant.

WHEELER, J. This suit was dismissed, with costs, for want of prosecution. The defendant claims a docket fee of \$20 as a part of the costs to be taxed, which the clerk has disallowed. This whole subject is carefully examined, and all the cases up to that time, bearing upon it, are reviewed, by Mr. Justice BLATCHFORD, in *Wooster v. Handy*, 23 Fed. Rep. 49. The conclusion is there reached that this docket fee in such cases is not taxable. That case is controlling here, notwithstanding the different views expressed by Judge HAMMOND in *Partee v. Thomas*, 27 Fed. Rep. 429.

Taxation of clerk affirmed.

LAMPREY v. PIKE and others.

(Circuit Court, D. Minnesota. June Term, 1886.)

1. JUDGMENT—DECREE OF STATE COURT—ESTOPPEL—RES ADJUDICATA.

Where a decree has been obtained in a Minnesota state district court against non-resident defendants, in a suit begun by the publication of summons, and, upon their appearance within one year from the time judgment was rendered, an order was made by the district court reopening the case, and permitting the defendants to come in and defend, and afterwards another suit was brought and transferred to the United States circuit court, *held*, that the order allowing defendants to come in and defend nullified the decree as a judgment *res adjudicata*, and cannot be relied upon as concluding the parties.

2. SAME—DOCKETING JUDGMENT—DECIPHERING NAME ON DOCKET—NAME TO BE READ IN CONNECTION WITH CONTEXT.

A transcript of judgment of the Ramsey county district court, docketed in Dakota county, did not have the defendant's name legibly and correctly spelled. Afterwards an execution, which described the name correctly, issued on the judgment, and the sheriff levied upon the land which he intended to levy upon by virtue of the judgment, and sold it as the land of defendant, and made his return, and gave his deed to the purchaser. *Held*, that all these facts should be taken into consideration in deciphering the name on the judgment docket, and that the judgment was properly recorded, and that the sale under it was valid.

3. DEED—AFTER-ACQUIRED TITLE INURES TO GRANTEE—COVENANT OF TITLE—LIEN OF JUDGMENT.

A conveyance, with covenant of title, made by a grantor who has a bond for a deed, and before he obtains the legal title, vests the legal title in the grantee *eo instanti* when the grantor obtains it, and there is no space of time in which the lien of a judgment obtained against said grantor, after the conveyance was made, can attach against the land.

In Equity.

U. L. Lamprey, for plaintiff.

Williams & Goodenow, for defendant.

MILLER, Justice. This is a chancery suit, brought originally in the state court, and transferred to this court. It was an action under the statutes of the state of Minnesota to quiet title to real estate in a case where the possession was not in either party. Those statutes exist throughout all the western states, as far as I know, and the intention of the framers of them generally was that an action in the nature of an action of ejectment should be brought, and the proper issues made, to determine the state of the title, and to quiet the title. The supreme court of the United States has held that while these may be called actions of ejectment in the state courts, inasmuch as the remedy to be applied, and the right asserted, are essentially of an equitable character, in the federal courts they are to be treated as bills in chancery, in the nature of a bill to quiet title. This suit is brought against persons, some, or perhaps all, of whom are non-residents, though in this case they have appeared and answered. The plaintiff relies upon two propositions to justify a decree against the defendants to quiet his title. The first of these is that the records which he produces, the deeds of conveyance, and derivation of title