

ants' property to the purpose of a public street, or for the extension of Woodruff avenue, upon making or providing just compensation in money for the property so to be appropriated, and damage to their remaining property; but that said common council, and the city of Toledo, its agents, officers, and attorneys, should be restrained and enjoined from enforcing or attempting to enforce so much and such portion of said ordinance as relates to the assessment therein, and thereby made on the remaining property of complainants. Such an injunction is accordingly awarded and decreed in favor of complainants. The costs of the case will be taxed against the city of Toledo, for which execution as at law may issue.

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ALLEN *et al.* v. FAIRBANKS.

(Circuit Court, D. Vermont. October 16, 1888.)

**EXECUTORS AND ADMINISTRATORS—FOREIGN ADMINISTRATORS—ACTIONS.**

Personal representatives, appointed in Missouri, cannot sue for assets of their testator's estate, situate in Vermont, such assets being recoverable only by personal representatives deriving authority within that jurisdiction.<sup>1</sup>

**In Equity.**

*Daniel Roberts*, for orators.

*Henry C. Ide*, for defendant.

WHEELER, J. This bill is brought to compel contribution among shareholders of a private corporation. Two of the orators, each seeking relief for himself alone, one seeking relief for himself with another jointly, and the defendant, have died. Personal representatives of the individual orators, appointed in Missouri, and the survivor of the joint one with the others, have brought *scire facias* against the personal representatives of the defendant in Vermont to revive the suit. The defendants have pleaded to so much of the *scire facias* as is brought in behalf of these representatives, and this survivor, denying their right to proceed with the case, and the plea has been argued.

The bill proceeds upon the ground that the defendant had in his hands money or property which in equity and good conscience belonged to the orators, respectively. This money or property constituted assets of the estates of these testators in Vermont. Such assets could only be recovered by personal representatives deriving authority from within that jurisdiction. *Wilkins v. Ellett*, 108 U. S. 256, 2 Sup. Ct. Rep. 641. This is not contrary to the decision in *Purple v. Whitted*, 49 Vt. 187, relied upon in behalf of these foreign representatives. In that case there were no assets of the estate of which the plaintiffs were administrators, in Vermont.

<sup>1</sup>As to the right of personal representatives to maintain an action to recover assets in a foreign jurisdiction, see *Gove v. Gove*, (N. H.) 15 Atl. Rep. 121, and note.

The plea appears to be sufficient as to these administrators. The right which belonged to the two jointly, at the death of one, however, survived to the other, and remains in him to be prosecuted. Their right is recognized and provided for by the statutes. Rev. St. U. S. § 956. Plea allowed as to executors in Missouri, without prejudice to administration in Vermont, and overruled as to the survivor and others.

FRAKER v. HOUCK *et al.*

(Circuit Court, D. Kansas. October 16, 1888.)

**MORTGAGES—DEEDS OF TRUST—BILLS TO REDEEM—LACHES.**

While complainant was confined in the penitentiary, for violation of the national bank act, the trustee, under a deed of trust to secure complainant's indebtedness to the bank, of which he had been president, sold the property to purchasers, who in good faith paid full value, the proceeds being applied to the debt, of which they paid only a small part. Complainant was pardoned within a few months after these sales, and, although he knew of them, and that the purchasers, supposing they had good title, were making improvements on the premises, he did not until more than seven years afterwards give any notice that he had any claim to them; paying no taxes, nor offering to pay any, nor taking any other step to assert his rights. Complainant contends that, because of his imprisonment at the time of the conveyances, they were, under the Kansas statutes, absolutely void, and that, as the trust deed gave no power of sale without a decree establishing the debt, he is in the position of a mortgagor out of possession, and entitled to redeem. *Held*, that the claim must be adjudged stale.

**In Equity.** Bill to redeem realty from a deed of trust. On demurrer. *L. H. Waters, Geo. H. English, and Geo. W. McOrary*, for complainant. *W. W. Scott, Sluss & Stanley, and A. L. Redden*, for defendants.

**BREWER, J.** This is a bill brought by complainant to redeem certain real estate from a deed of trust executed on the 18th of September, 1876. The circumstances under which this deed of trust was given are these: The First National Bank of Wichita had suspended. It was expected that a receiver would soon be appointed by the United States comptroller. Complainant had been president of the bank, and was largely indebted to it at the time of its suspension. James R. Mead was named as trustee, and, in addition to the ordinary language of a trust deed, making the conveyance as security for the payment of his indebtedness to the bank, the instrument contained the following provision:

“Provided, further, that the said James R. Mead, party of the second part, shall at once take possession of the premises hereby conveyed, and proceed to receive and collect the rents, issues, and profits of the same. Provided, further, that, if default be made in the payment of any of the indebtedness or liabilities herein secured, when the same becomes determined, and due and payable by the terms or nature of such several items of indebtedness or liability, the said party of the second part, or his successors, shall, as soon as practicable, after he shall be directed so to do by the comptroller of the United States,