IN RE DOTY.

Case No. 4,017.

{16 N. B. R. 202;[1] 1 N. W. Rep. (O. S.) 165; 10 Chi. Leg. News, 1; 25 Pittsb. Leg. J. 24.}

District Court, D. Minnesota. Aug. 22, 1877.

BANKRUPTCY—PROVABLE DEBTS.

No debt can be proved on which an action could not be maintained against the bankrupt in the state where the petition is filed, in case bankruptcy proceedings were not instituted.

I, Henry C. Butler, one of the registers of said court in bankruptcy, do hereby certify that, in the course of the proceedings in said cause before me, the following question arose pertinent to said proceedings, and was stated and agreed to by the counsel for the opposing parties, to wit: Messrs. Start & Gove, who appeared for the assignee of the bankrupt {A. J. Doty}, and opposed the allowance of the claim hereinafter described, and Messrs. Jones & Gove, who appeared for Tennis S. Slingerland, and one of the creditors of said bankrupt. The said Tennis S. Slingerland, on the 15th of March, 1877. made and filed his proof of debt for $734.24, and such proof of debt and claim against the estate of said bankrupt is predicated upon two promissory notes made by said bankrupt to said Slingerland; one of which was made and delivered on the 3d day of July, 1868, for the sum of $179, with interest at 12 per cent, per annum, payable in one year from said date; the other was made on the 5th day of August, 1869, for the sum of $194.71, with interest at the rate of 12 per cent, per annum, and was payable in one year from that date. The note first above described became due and payable on the 6th day of July, 1869, and the other on the 8th of August, 1870. No payments have been made on said notes, or either of them. At the time when the said notes were given, both the said Tennis S. Slingerland and the said bankrupt were, ever since have been, and now are residents of the state of Minnesota. The said claim, demand, and cause of action of the said Tennis S. Slingerland against the estate of said bankrupt did not accrue within six years next before the filing of the petition in bankruptcy by the said bankrupt; neither did any part of said claim, demand and cause of action accrue within six years next before the filing of said petition. Upon the said proceedings, and upon the foregoing facts as stated and agreed to by the counsel for the opposing parties, the following question of law arose as agreed to by said counsel: Can a claim which is barred by the statutes of limitation of the state of Minnesota, be proved so as to entitle the holder to share in the estate of a bankrupt when both the creditor and the bankrupt reside in said state, and have resided therein ever since the debt was contracted, and the debt was contracted therein? And the said parties requested that the same should be certified to the judge for his opinion thereon. Dated at Bochester, August 20th, 1877. Henry C. Butler, Register in Bankruptcy.

NELSON, District Judge. I answer the question certified in the negative, and agree to the conclusion reached by the learned judge of the Massachusetts district In re Kingsley [Case No. 7,819]. The rule that no debt may be proved in bankruptcy on which an action could not be maintained against the bankrupt in the state where the petition is filed, in case bankruptcy proceedings were not instituted, commends itself to my judgment The statute of Minnesota provides that an action could "only be commenced" to enforce the debt referred to in the question

certified within six years. The construction by the supreme court of the state of this statute is, that the bar is complete and the statute need not be pleaded. The fact that it appears upon the face of a complaint that the cause of action is barred by statute, is good ground for demurrer, and for reversal of a judgment upon a writ of error. 11 Minn. 320 {Gil. 224}.

[1] {Reprinted from 16 N. B. R. 202, by permission.}