408

Case No. 11,635.

IN RE REED.

{6 Biss. 250;[1] 11 N. B. R. 94; 7 Chi. Leg. News, 76.}

District Court, N. D. Illinois. Nov., 1874.

BANKRUPTCY—PROVING CLAIM—STATUTE OF LIMITATIONS—PROOF OF WAIVER.

1. It seems, that a debt barred by the statute of limitations of the state where the bankrupt resides cannot be proved in bankruptcy.

{Cited in Nicholas v. Murray, Case No. 10,223.}

2. Less strictness of proof is required to establish a promise by the debtor before the bar of the statute has attached, than to prove a new promise after the debt has become barred.

3. Interest will not be allowed where the debt depends upon the new promise.

In bankruptcy. This was a re-examination of the claim of J. Willard Fox, a creditor of said bankrupt {C. W. Reed}, whose claim was disputed by the assignee.

A. S. Bradley, for assignee, cited, in support of the plea, In re Kingsley {Case No. 7,819}; In re Hardin {Id. 6,048}; In re Cornwall {Cases Nos. 3,250, 3,251}; Ang. Lim. § 247, note, and cases therein referred to; Wetzell v. Bussard, 11 Wheat. {24 U. S.} 309; 409 Bell v. Morrison, 1 Bet {26 U. S.} 351; Ayers v. Richards, 12 Ill. 146; Dickerson v. Sutton, 40 Ill. 403; In re Anderson {Case No. 351}.

{That the evidence was not sufficiently positive as to the time of the promise or its extent, or that the bankrupt admitted understandingly, before his bankruptcy, the receipt of the goods, and that nothing had been paid; that the evidence is vague and contradictory as to the new promise, while it sufficiently appears that the bankrupt declined and resisted payment successfully of any part of the claim up to the time of his bankruptcy. Wetzell v. Bussard,

11 Wheat. [24 U. S.] 315; Bell v. Morrison, 1 Pet [26 U. S.] 360; Ayers v. Richards, 12 Ill. 148; Dickerson v. Sutton, 40 Ill. 404; In re Anderson [supra].[2]

McDaid, Wilson & Picher, for creditor, cited, against the plea, the opinion of Judge Blatchford in Re Ray [Case No. 11,589]; In re Perry [Id. 10,998]; and also argued that the running of the statute was arrested by bankrupt's acknowledgment, and that a suit was brought by the creditor, the result of which is not shown by the evidence. That the acknowledgment was sufficient, counsel cited Wooters v. King, 54 Ill. 343.

BLODGETT, District Judge. I shall allow the defense of the state statute of limitations by the assignee, to the claim of a creditor seeking to prove his debt in bankruptcy wherever that defense might have been made in a suit in the state where the debtor resides. From an examination of the law, upon which there are, however, conflicting decisions, I consider the above conclusion to be supported by the weight of reason and authority, and shall adhere to this decision unless the law is otherwise settled by the appellate court.

As to the point of a new promise, I am of the opinion that the evidence in this case showed an acknowledgment by the debtor before the five years had expired, which was sufficient to prevent the statute from running, and that acknowledgment before the bar might be sufficient, although it would not amount to a new promise after the debt was barred. I shall, therefore, allow the claim, without interest, however, as I do not consider it a proper case for the allowance of interest against the estate.

NOTE. The statute of limitations ceases to run against the creditor of a bankrupt at the commencement of the proceedings in bankruptcy, and, if not barred at that time, his claim may be proved afterwards, though at the time of proof it would be

otherwise barred. In re Eldridge {Case No. 4,331}. A debt barred by the statute of limitations of the state in which the proceedings in bankruptcy are pending is not provable against the estate of the bankrupt and cannot be reckoned in computing the number necessary to join in an involuntary petition. In re Noeson {Id. 10,288}.

[1] {Reported by Josiah H. Bissell, Esq., and here reprinted by permission.}

[2] {From 11 N. B. R. 94.}