

& J. 46, 330. A like rule has obtained in cases arising under the insolvent law and under voluntary assignments, and in the administration of the estates of decedents. *Minot v. Thacker*, 7 Metc. 348; *Willard v. Clarke*, Id. 435; *West v. Creditors*, 1 La. Ann. 365; *Heckert's Appeal*, 24 Pa. St. 482; *McClintock's Appeal*, 29 Pa. St. 360; *McCandless' Appeal*, 61 Pa. St. 9. The underlying principle of these decisions is that mere lapse of time will not bar claims against the trust estate valid and in full life when the trust was created, so long as the estate is unadministered and the trust subsists. The principle is perfectly sound, and there is no good reason why it should not prevail in cases under the bankrupt law. The statute of limitations, operating upon the remedy, bars an action at law, but it does not extinguish the debt, and is no obstacle to the creditor who seeks his share of the assets in the hands of the assignee, where such creditor had a provable debt when the bankruptcy proceedings commenced. It is very true that section 4984, Rev. St., prescribes that in the circuit court, upon an appeal, the contested claim must be declared on and tried as in an action at law. And if, as assumed by the exceptants, the statute of limitations would be a good plea in bar to the declaration in the circuit court, then undoubtedly it ought also to operate as a bar to the proof of debt. But the assumption is unwarrantable, for the purpose of the issue and trial in the circuit court is not to obtain a judgment against the debtor, or the assignee personally, but to determine whether the creditor has a provable debt, and the amount thereof.

And now, April 4, 1883, the exceptions to the register's report are overruled, and the report is confirmed absolutely.

In re SCHNEIDER.*

(District Court, E. D. New York. March 24, 1883.)

BANKRUPTCY—ASSIGNER'S CHARGES.

A former assignee of a bankrupt has not a prior claim for his compensation to that of a subsequent assignee in whose hands there are not sufficient funds to pay the charges of both.

Semble, that in that case the amount should be divided *pro rata* between the two assignees.

*Reported by R. D. & Wyllys Benedict.

In Bankruptcy.

Abbett & Fuller, for the motion.

Henry J. Darby, for the assignee.

BENEDICT, J. This is an application for an order directing the present assignee of the above-named bankrupt to pay out of the funds in his hands the sum heretofore found due a former assignee, on being discharged from his trust. It is evident that there has been no violation of the order of February 28, 1882, and so the moving party concedes. The only question, therefore, is whether the petitioner is at this time entitled to be paid the sum heretofore determined to be his proper compensation.

If the claim of the petitioner were entitled to priority of payment over the claim of the present assignee for his compensation, inasmuch as there are funds in the hands of the present assignee sufficient to pay the petitioner, there would be no reason for deferring his payment. But it is not seen that any such right of priority exists. The account of the assignee shows that the funds in his hands are not sufficient to pay his own proper charges and also those of the former assignee. If there was no likelihood of any additions to the fund, it would seem proper now to divide the amount *pro rata* between the two assignees; but as the papers show a probability that sufficient money will shortly be realized by the present assignee to enable him to pay both claims in full, it is hardly worth while to make a division at the present time. The present motion is therefore denied, without prejudice to another motion, and without prejudice to the claim of the petitioner.

MARSH v. NICHOLS and others.*

(Circuit Court, E. D. Michigan. March 5, 1883.)

1. PATENTS FOR INVENTIONS — VALIDITY — OMISSION OF SIGNATURE OF SECRETARY OF INTERIOR.

A valid patent must be signed by the commissioner of patents and the secretary of the interior. If signed by the commissioner and not by the secretary, the patent is a nullity, though the omission be accidental.

2. SAME—RECORD OF PATENT-OFFICE.

In such case the patent cannot be sustained by the production of the record of the patent-office showing a complete patent, since a perfect record of an imperfect patent cannot prove the grant.

*See 7 Sup. Ct. Rep. 704.