

SUN MUT. INS. Co. and others v. MISSISSIPPI VALLEY TRANSP. Co.*

(District Court, E. D. Missouri. June 15, 1883.)

1. PRACTICE—EXCEPTIONS TO COMMISSIONER'S REPORT.

Supposed errors in a decree of the court cannot be reviewed on exceptions to the report of a commissioner appointed to ascertain damages.

2. DAMAGES—COMMISSION ON SALES OF ABANDONED PROPERTY NOT ALLOWABLE.

Where property damaged through the negligence of a common carrier was abandoned by the owner to the underwriters, who paid the loss, sold the property, and brought suit against the carrier for damages, *held*, that said underwriters were not entitled to any commission on said sales.

In Admiralty. Exceptions to commissioner's report.

The special commissioner appointed by the court to ascertain and report the damages which libelants had suffered by reason of the collision mentioned in the libel in this case,† filed a report allowing the libelants, among other things, a commission of 2½ per cent. on sales which they had made of goods damaged by the collision, and abandoned to them by the owners. The respondent filed a number of exceptions, one of which is to the allowance of said commission.

O. B. Sansum and Brown & Young, for libelants.

Given Campbell, for respondent.

TREAT, J. The rules by which damages are to be estimated were established in the case of *The Scotland*, 105 U. S. 24.

Many of the exceptions filed look to supposed errors in the former decree of the court, which cannot be reviewed in these exceptions. Without passing formally on each of the exceptions named, *seriatim*, the court rules that all commissions charged should be rejected; for, if there was an abandonment, technical or otherwise, the title to the property passed to the underwriters. They should not be allowed commissions for selling their own property. True, such commissions were taken into consideration for the ascertainment of the value of the salvaged property; yet it is not properly chargeable as commissions against the respondent. Therefore the account, properly stated, will be, deducting commissions and interest thereon, as follows: Sun Mutual Insurance Company, \$2,097.90; Hibernia Insurance Company, \$2,660.31; Citizens' Insurance Company, \$4,762.46. All the exceptions are overruled, except these as to commissions, and the decree will be in favor of the respective libelants, as above stated.

*Reported by B. F. Rex, Esq., of the St. Louis bar.

†See 14 FED. REP. 699.

REBER, Assignee, etc., v. GUNDY.

*(Circuit Court, W. D. Pennsylvania. January 7, 1883.)***1. LIMITATIONS IN BANKRUPTCY—REV. ST. § 5057—SUIT TO ANNUL JUDGMENT.**

Section 5057 of the Revised Statutes is not confined to contests involving the title to or ownership of the bankrupt's property, but, in explicit terms, it comprehends all claims of adverse interests which touch or relate to any property or rights of property transferable to or vested in the assignee; and a suit in equity by an assignee, to annul a judgment confessed by a bankrupt under circumstances that make it a preference in fraud of the bankrupt law, will be barred by this section, "unless brought within two years from the time when the cause of action accrued."

2. SAME—SUIT, WHEN BEGUN—PROCEEDINGS BEFORE REGISTER.

The antecedent proceedings before the register, in which he unwarrantably assumed to decide that the judgment was fraudulent, cannot be considered as a part of this suit; and as, until the bill was filed, no suit was begun, and the bill was not filed until more than two years after the cause of action stated in it accrued to complainant, the suit is barred.

In Equity. Appeal from the decree of the United States district court.

Charles S. Wolfe, Andrew A. Leiser, and George C. Wilson, for appellant.

A. H. Dill and John M. Kennedy, for appellee.

MCKENNAN, J. The respondent in this bill of complaint was a creditor of the bankrupt, and on the eleventh of March, 1878, took from him a bond with warrant of attorney to confess judgment, in pursuance of which judgment was duly entered on the thirteenth of March, 1878, in the court of common pleas of Union county, Pennsylvania, and thus became a lien upon the bankrupt's real estate in that county. On the thirtieth of March, 1878, a petition was filed by creditors of the bankrupt in the district court in bankruptcy, he was in due course adjudged a bankrupt, and on the eleventh day of June, 1878, an assignment of all his property was duly made to the complainant in this bill. On the twenty-second day of March, 1882, this bill was filed, "with like effect," as agreed in writing by the parties, "as if the same had been filed the sixth September, 1880." The latter date is, therefore, to be taken as the date of the commencement of this suit. As more than two years elapsed after the assignment to the complainant and the commencement of this suit, and this appearing upon the face of the bill, the respondent has interposed a plea alleging that this suit is barred by the limitation prescribed in the second