

valuation. Since the forfeiture, Thomas Henderson and others, owners of the steamer, have presented a petition to me, pursuant to the provisions of sections 17 and 18 of the act of June 22, 1874, praying for an allowance of freight from the proceeds of the sale, and one Joseph Wells has also petitioned to be reimbursed for certain advances of money made by him on the purchase of the property without knowledge of the violations of the revenue laws by the importer.

Under the provisions of the eighteenth section I directed the summary investigation, provided for by the act, to be made by William Muirheid, Esq., one of the United States commissioners for the district, ordering him to state and annex to the petition the facts appearing from the evidence, together with a certified copy of the evidence, in order that the same might be transmitted to the honorable secretary of the treasury for adjudication.

The commissioner has made his report, finding the facts which he was ordered to do, and also finding the law, which was not within the reference. The counsel for the petitioners, Henderson and others, have filed exceptions to the report of the commissioner, and asking that numerous changes should be made by the judge.

I think the fair construction of the act is that these exceptions should go with the report to the secretary of the treasury, and should be considered by him in making up his judgment in the case. I have accordingly declined to pass upon them. I should direct all expressions of opinion by the commissioner, as to the law of the case, to be stricken from the report, as not coming within the reference, if I supposed they would tend to prejudice the judgment of the secretary of the treasury.

In re ACCOUNTS OF THE SHIPPING COMMISSIONER OF THE PORT OF NEW YORK.

(Circuit Court, S. D. New York. June 8, 1883.)

SHIPPING COMMISSIONER OF PORT OF NEW YORK—SALARIES OF DEPUTIES—REFERENCE TO MASTER.

While, on the facts before the court, it cannot assume that the salaries of \$3,648, paid by the shipping commissioner of the port of New York to his three sons, whom he has appointed as his deputies, are excessive and should not be allowed, it is ordered that the accounts be referred to the master to take proof and report explicitly upon the reasonableness of the salaries paid by the shipping commissioner to his deputies, upon notice to the United States attorney, and with leave to the United States attorney to introduce testimony.

Objections to Master's Report.

H. E. Duncan, on part of shipping commissioner.

Elihu Root, U. S. Atty., *contra*.

WALLACE, J. Upon the presentation of the report of the master, to whom it was referred to examine the annual account of Mr.

Duncan as shipping commissioner, and report to the court, the United States attorney appeared, and objected that the salaries paid by the shipping commissioner to the clerks in his office, and included in such account, are excessive. The objection is particularly addressed to the salaries paid by the shipping commissioner to his three sons, each of whom is a "deputy commissioner," by the appointment of his father, and each of whom was paid for the year 1882 the sum of \$3,648. In view of the testimony of Mr. Duncan before the master as to the nature of the duties which are discharged by these deputies, and the compensation which they fairly earn, the court, in the absence of any controverting testimony, cannot assume that the salaries paid are exorbitant. The objection now made has been urged on former occasions, when the accounts of the shipping commissioner were presented to this court for approval, and has been overruled by each of my predecessors,—Judges WOODRUFF, JOHNSON and BLATCHFORD, each of whom has sanctioned the payment of larger salaries to these same deputies for the same services than were paid to them respectively in 1882. *In re Account of Shipp'g Com'r*, 16 Blatchf. 92. Nevertheless, the objection has been uniformly made by the United States attorney when these accounts have been presented; not perfunctorily, but because he has deemed it his duty to urge it in the proper discharge of a responsibility imposed upon him by the court under its order made in 1876. While it is not just to indulge a presumption against the honesty and propriety of the action of the shipping commissioner merely because these salaries are paid to his sons, who were made deputies by his own appointment, still, the shipping commissioner must concede himself that the circumstance that these salaries are adjusted upon a flexible scale, which increases or decreases them so that, in connection with the other expenses of the office, they always absorb the entire receipts, is well calculated to excite unfavorable criticism. It is not strange, therefore, notwithstanding the action of this court on former occasions, that the propriety of paying these salaries should be questioned again. I think it is due to the court whose officer Mr. Duncan is, to the United States attorney, and to Mr. Duncan himself, that there should be a thorough investigation of the whole matter, in order that if any abuses exist they may be effectually suppressed, and if none are found to exist that the shipping commissioner may be exonerated henceforth from unjust suspicions.

It is ordered that the accounts be referred back to the master to take proof and report explicitly upon the reasonableness of the salaries paid by the shipping commissioner to his deputies, upon notice to the United States attorney, and with leave to the United States attorney to introduce testimony.

GREENWALD and others v. APPELL.

(Circuit Court, D. Colorado. June 23, 1883.)

1. STATUTES OF LIMITATIONS.

Statutes of limitations are statutes of repose, and are enacted upon the presumption that one having a well-founded claim will not delay enforcing it beyond a reasonable time if he has the power to sue. Such reasonable time is, therefore, defined and allowed. But the basis of the presumption is gone whenever the ability to resort to the court has been taken away, and in such a case the creditor has not the time within which to bring his suit that the statute contemplated he should have.

2. SAME—BANKRUPTCY—DELAY IN APPLYING FOR DISCHARGE.

Proceedings in bankruptcy amount to an injunction against any proceedings against the bankrupt to enforce his contracts in the courts, but if he delays for an unreasonable time to apply for his discharge, the right of action against him upon his contracts or debts, which was suspended by the commencement of proceedings in bankruptcy, revives, and during the time that the right of action was suspended by the bankruptcy proceedings the statute of limitations will not run in his favor.

McCrary, J., (*orally*.) This is an action at law upon certain promissory notes, and also, I believe, upon an open account. There is a demurrer to the complaint, which raises the question whether the action is barred by the statute of limitations of this state. The defendant, Appell, was adjudicated bankrupt in the state of Pennsylvania some years ago, and the proceedings in bankruptcy were continued for some years, and are probably still pending; but Appell has never been discharged.

The theory of this suit is that, having delayed for an unreasonable time to apply for his discharge, the right of action against him upon these debts, which was suspended by the commencement of proceedings in bankruptcy, has revived; and the question here is whether, during the time that the right of action was suspended by the bankruptcy proceedings, the statute of limitations of the state of Colorado continued to run in favor of the bankrupt; or, in other words, does the bankruptcy of the debtor suspend the running of the statute of limitations in his favor? That it suspends the right to sue, by the very terms of the bankrupt act, is not disputed. After the commencement of proceedings in bankruptcy against the debtor, and after an adjudication in bankruptcy, no suit can be brought against him in any court; certainly, not without the consent of the bankruptcy court. It amounts, in other words, to an injunction against any proceedings against the bankrupt to enforce his contracts in the courts of the country. If he is not discharged, then the action revives after the proceedings in bankruptcy are ended.

The old rule upon this subject was very strict, and many authorities have been cited which clearly hold that if the statute of limitations begins to run, nothing will stop its running except something that is expressly provided in the statute itself; and it was formerly