

devisee and legatee, and she has been discharged from her trust as executrix. So it appears from the bill.

This suit is brought against her to enforce a trust vested in her as legatee, for the benefit of complainant, and not against her in her representative character of executrix. So, the closing passage of the will, making the same provision applicable to her co-executor or co-executors in the contingency provided for, "as I have before made for her in reference to bonds and duties and powers," has sole reference to the bonds waived, and to the "duties and powers" conferred on her as executrix. It confers no rights or powers or duties upon these co-executors in the character of devisees or legatees; and no argument can be derived from this passage to support the creation by the court of a trust.

Upon the views thus taken upon the construction of the will it is unnecessary to notice the other points argued under the demurrer. The demurrer is sustained, and, as the whole case depends upon the construction of the will, no amendment can be made to the bill that will obviate the objection taken by the demurrer. The bill must therefore be dismissed; and it is so ordered.

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COLTON v. COLTON.

(Circuit Court, D. California. September 22, 1884.)

WILL—PRECATORY TRUST.

*Colton v. Colton, ante*, 594, followed, demurrer sustained, and bill dismissed.

*W. W. & H. S. Foote and Grove L. Johnson*, for complainant.

*Crittenden Thornton and Stanly, Stoney & Hayes*, for defendant.

SAWYER, J. This is a bill in equity seeking a decree declaring and enforcing a trust in favor of the sister of the late David D. Colton, deceased, claimed to arise out of the same clause of the will considered in the preceding case of *Colton v. Colton, ante*, 594. The same construction must, of course, be given to the clause in this case as was adopted in the other. For reasons in that case stated, the demurrer to the bill must be sustained and the bill dismissed; and it is so ordered.

## FINK and others v. PATTERSON and others.

(Circuit Court, E. D. Virginia. July, 1884.)

### EQUITABLE JURISDICTION AND RELIEF—INSOLVENT PARTNERSHIP—RECEIVER.

An insolvent firm offers by circular letter to its creditors to pay 50 per cent. of their debts, and agrees in the same circular to make no preferences. Many creditors accept the offer. It subsequently continues business at large expense, postpones the execution of this compromise for an indefinite period until all the creditors accept, and pays many of the debts in full, thereby making preferences. *Held*, equity has jurisdiction on bill filed to appoint a receiver and take possession of the firm assets and administer them for the benefit of the creditors; and this can be done in Virginia by a creditors' bill, without previously obtaining judgments at law.

In Equity. The facts are stated in the opinion.

*Coke & Pickrell*, for plaintiffs.

*Friend & Davis*, for defendants.

HUGHES, J. The principal facts of this case, as shown by the papers and proofs now before the court, are as follows:

The defendants are grocers in Petersburg. They have been carrying on their business since 1878. They put no capital in it. They began with a stock of goods worth about \$4,000, and owed for it about \$6,000. Their business has not been profitable. They have made nothing but their personal expenses. By the first of June, 1884, they became insolvent, and their business paper went to protest. Thereupon they consulted legal counsel as to the course best to be pursued. These advised an assignment in liquidation. They did not adopt this advice. They took counsel of mercantile friends in Petersburg, expressing a wish to go on with their business as the best method of liquidating their affairs. They determined to go on with it for this purpose. They accordingly drew up a scheme for compounding with their creditors, framed on the basis of paying 50 per cent. This was approved and accepted by most of their Petersburg creditors. They then proposed this scheme to their creditors in general, embodying it in a circular letter, which was mailed to the non-residents. The circular was as follows:

"PETERSBURGH, 18th June, 1884.

"To \_\_\_\_\_.

"DEAR SIR:

"We owe, by bills payable and open accounts, - - - \$26,552 19

"Our assets are stock in hand, bills receivable, and open accounts that we consider good, - - - 14,156 81

"We offer to our creditors fifty cents in the dollar, to be paid as follows: Twenty cents in the dollar, first November, 1884; twenty cents in the dollar on the first March, 1885; and ten cents in the dollar in cash as soon as our banks begin to discount paper, which we believe will be in a very few days. The deferred payments to carry interest at the rate of six per cent. per annum. We make no preferences, but make the same proposition to all. Please let us hear from you at as early a date as practicable.

"Yours, truly,

PATTERSON, MADISON & Co."

Meanwhile, and until the eighth of July, their business went on as before, except that they discharged two clerks, and made purchases of only such goods as were necessary to fill orders, buying both for cash and on credit. They continued to collect and sell, and they paid some of their debts in full.