

near the edge. You must judge from the testimony and experience how many blows it takes to wear out a flatter, the use of flatters generally, the number of injuries similar to the one under consideration occurring, and determine whether what happened was an accident or not. If you come to the conclusion it was an accident, the plaintiff is remediless, and the company not liable.

PRICE v. PRICE *et al.*

(District Court, E. D. Virginia. June, 1880.)

1. **BANKRUPTCY—POWERS OF ASSIGNEE—SUIT IN STATE COURT.**

The assignee of a bankrupt cannot, either voluntarily or by service of process, become a party to a suit in a state court to enforce a lien against the bankrupt's lands, except by express authority from the bankrupt court, as that court, under the bankruptcy act, has exclusive jurisdiction over the entire estate.

2. **SAME—ESTOPPEL.**

But, although the assignee is made a party without such authority, the bankrupt himself cannot, after litigating the case during five years to a final decree in the state supreme court, have an injunction in the bankruptcy court against the execution of such decree.

In Bankruptcy. Bill by Warfield Price against Tazwell Price and others to enjoin the enforcement of a decree rendered in a state court. On motion to dissolve a preliminary injunction. Granted.

J. A. Meredith and E. Barksdale, for plaintiff.

Hansbrough & Hansbrough and Guy & Gilham, for defendants.

HUGHES, J. In this case a lien creditor filed a bill in a state court in September, 1874, to subject land of the bankrupt's estate bound by trust-deed, and joined the bankrupt and his assignee in bankruptcy, among others, as defendants. It was competent for the creditor to do so, if he could secure the assignee in bankruptcy as a defendant; but the assignee had no legal authority to become such defendant unless by special order of the bankruptcy court; that court having exclusive jurisdiction over the bankrupt's estate, real as well as personal. See sixth clause of section 711, the eighteenth of section 563, and section 4972, Rev. St. U. S. Unless express authority from the bankruptcy court were necessary to authorize an assignee to be sued in respect to the bankrupt's estate vested by law in him, the law of congress giving exclusive jurisdiction to the bankruptcy court over the bankrupt's estate would be futile, and that jurisdiction would be of no avail. The complainant in the suit in the state court had no right to call the assignee in bankruptcy into that court; nor could the assignee consent to be a party there, except by express order of this court, granting leave. The suit in the state court was therefore faulty in its inception. Nevertheless it went on to a final decree, and was taken up from that decree by petition for appeal to the appellate court of highest resort in the state, and the peti-

tion for appeal was unanimously denied by all the judges of that court. I do not know whether the defective inception of the proceeding was shown or relied upon by the defense, either in the court below or in the appellate court. I suppose it was not. The record seems to show that it was not. The cause seems to have been determined in the state court on its merits, and the question of jurisdiction as to the assignee in bankruptcy seems not to have been raised. If the assignee had applied to this court for leave to make himself defendant in the state court it would have been granted unless strong cause had been shown against doing so; and, if the bankrupt had shown, as charged in this case, that the assignee was acting in collusion with the complainant in the suit in the state court to defraud his estate, still the order would have been given, but the assignee complained of would have been removed, and another assignee appointed. But the bankrupt (nor any other person) did not apply to this court either for an order restraining the assignee from being made, or from becoming party defendant to that suit, or for an order removing the colluding assignee and appointing another. The suit was allowed to go on upon its merits, without the fact being brought to the attention of this court, which had in fact made an order directing the removal to the western district of the bankruptcy proceeding in this cause. And now, nearly six years after the suit in the state court was instituted, the bankrupt himself files his bill here asking that the complainant and officers in the state court be enjoined from the execution of the decree of the state court. The question is whether the ground indicated above, which was a good one at the inception of the suit in the state court, if then promptly availed of, to stop the suit there, is of such a nature as now to justify this court in arresting proceedings under the decree of the state court. I think the objection was of such a nature as, if not availed of at the proper time, was cured by the acquiescence of the bankrupt. After actively participating in a litigation for five years, until he had availed himself of every expedient allowed by law in the state court for the protection of his interests, and finally lost his cause there, he will not be heard here in arguing a technical objection to the proceeding there, which he has slept upon for five years. The injunction which has been granted by this court must be dissolved.

UNITED STATES v. LEE HOY.

(District Court, D. Washington, N. D. December 15, 1891.)

CHINESE MERCHANTS—RE-ENTRY WITHOUT CERTIFICATE—DECISION OF COLLECTOR.

The presence of a Chinese merchant, otherwise entitled to be in the United States, is not rendered unlawful by the fact that upon his return from a visit to Canada the collector permitted him to land, upon the certificates of private persons and his own personal knowledge, without the viséd certificate required by section 6 of the amended exclusion act. (Act Cong. July 5, 1884;) since that section also provides that "the collector shall in person decide all questions in dispute with regard to the right of any Chinese passenger to enter the United States, and his decision shall be subject to review by the secretary of the treasury, and not otherwise."

At Law. Appeal by Lee Hoy from a conviction before a United States commissioner of being unlawfully in the United States. Reversed.

P. H. Winston, U. S. Atty.

William H. White, for defendant.

HANFORD, J. The defendant in this case came to the United States from China in the year 1880, and has made his home in this country ever since. For eight years after his arrival he belonged to the laboring class, and was employed as a cook. With the capital accumulated by saving his wages he purchased a stock of merchandise, and for upwards of three years past he has been a merchant at Port Angeles, in this state. There is no question as to his identity, nor as to any of the facts above stated. The defendant is as well known in the community where he lives as any other merchant there. He has frequently visited a relative at Victoria, but has never been out of the United States since his first arrival in 1880, except for the purpose of making said visits. In going to Victoria and returning he always traveled by regular passenger steamboats, and always landed, on returning, with the knowledge and consent of the collector or an acting collector of customs at Port Townsend, his identity and occupation as a merchant being proven by a certificate given him by well-known prominent citizens acquainted with him. On the occasion of his last return from Victoria the acting collector of customs permitted him to land, upon the evidence of such certificates in part, but chiefly upon his own personal recognition of the man, and knowledge as to his residence and business, and he was allowed to go to Port Angeles as usual, and was not molested for a period of some two weeks thereafter, when he was arrested upon a charge of being a Chinese person not lawfully entitled to be or remain in the United States. Upon a hearing before a United States commissioner he was convicted, and a warrant for his deportation to China was issued. From the judgment of the commissioner he has appealed to the judge of this district, under the provisions of the thirteenth section of the act approved September 13, 1888, (25 U. S. St. 479.)

The only reason for supposing that this defendant is not lawfully in this country, or that he can be lawfully deported, is that, having been out of the United States, he returned without a certificate properly issued