BELLOWS *v.* SOWLES *et al.*

(Circuit Court, D. Vermont. October 25, 1892.)

EQUITY—PARTIES—BILL TO RECOVER LEGACY.

A legatee under a will brought a bill against the executor and against the receiver of a bank to reach property of the testator held by the bank, and moved that other legatees of the same amount be made parties. *Held*, that there was no ground for compelling the other legatees to become parties to the suit, for, though they claimed in the same right, they did not claim the same trust property, but merely their separate shares in the avails of it, if any, after the assets had been collected and distributed in some way by decree of the probate court.

In Equity. Suit by Frederick Bellows against Edward A. Sowles, as executor of the wills of Hiram and Susan Bellows, and against Chester W. Witters, as receiver of the First National Bank of St. Albans. Motion by complainant for an order of court making Charles Bellows and Bert Bellows parties to the suit. Denied.

Chester W. Witters, pro se.

WHEELER, District Judge. The orator and his brothers, Charles and Bert, are alleged to be legatees of $2,000 each in the wills of Hiram and Susan Bellows, of which the defendant Sowles is executor. He has brought this suit in behalf of himself and all others in like interest who will join him in it, to reach real and personal estate which was of the testators acquired by the First National Bank of St. Albans, of which the defendant Witters is receiver. They have not joined in the suit, and this defendant moves that they be made parties, as claimants of the same property, by order of court. But these legatees are not claimants of the same property. Each claims a separate legacy of $2,000 in money. In this state, jurisdiction of distribution of estates of deceased persons is vested exclusively in the probate courts. The equity jurisdiction of this court cannot be restrained by statutes of the state. *Wayman* v. *Southard*, 10 Wheat. 1; *Beers* v. *Haughton*, 9 Pet. 329. But the rights of the parties are to be ascertained by the laws of the state. The legacies are not made chargeable upon any of the property, and neither of the legatees is entitled to a decree against the receiver merely because the legacies are unpaid, and he has assets of the estates. The assets must be got together, and be distributed by decree under the will in some way, before either will be entitled to them. *Boyden* v. *Ward*, 38 Vt. 628. The legatees claim in the same right, but that is not enough to warrant forcing either to become a party to a suit of the other. They do not claim the same trust property in litigation before the court, but merely their separate shares in the avails of it, if any. No ground appears for compelling them to become parties to another's suit. Motion denied.

FOOTE *et al.* v. GLENN.

(Circuit Court, D. New Jersey. September 27, 1892.)

INJUNCTION—RESTRAINING ENFORCEMENT OF JUDGMENT—FEDERAL AND STATE COURTS.

Decrees of state courts, having jurisdiction, in a suit against a corporation, brought by a creditor on behalf of himself and others, established the validity and declared the legal effect of a deed of trust made by the corporation for benefit of creditors, ascertained the debts owing by it, and made calls on unpaid subscriptions to its capital stock, upon which the trustee appointed to execute the deed of trust recovered judgment against a stockholder in a United States circuit court in another state. *Held*, that that court would not restrain the enforcement of such judgment upon charges of fraud and collusion in the allowance of claims by the decrees of the state courts, neither the corporation nor the creditors whose claims were impugned being parties to the suit for injunction, and there being other creditors having just claims for the payment of which there were no assets except the unpaid subscriptions; as, even if more than the complainant's just proportion of such valid claims should be collected by execution, the excess would be refunded.

In Equity. Motion for preliminary injunction. Denied.

Suit by John T. Foote, Catharine J. Cooper, and Robert D. Foote against John Glenn, trustee of the National Express & Transportation Company, to restrain the enforcement of a judgment recovered by defendant against the complainant John T. Foote. See 36 Fed. Rep. 824. The complainants joining with Foote in the bill were the sureties upon the bond given by him upon allowance of a writ of error to review said judgment. Complainants moved on their bill and affidavits for a preliminary injunction.

Alfred Mills and *George Zabriskie*, for complainants.

Charles Marshall and *Charles Biddle*, for defendant.

Before ACHESON, Circuit Judge, and GREEN, District Judge.

ACHESON, Circuit Judge. That the chancery court of the city of Richmond, Va., in the suit brought by William W. Glenn, suing on behalf of himself and other creditors, against the National Express & Transportation Company, a corporation of Virginia, and others, had jurisdiction to make its decree of December 14, 1880, establishing the validity of the deed of trust for the benefit of creditors, executed by the said corporation, and declaring its legal effect, removing the surviving trustees thereunder, and appointing a new trustee (John Glenn) in their place, ascertaining the debts owing by the corporation, and making an assessment and call upon the subscribers to its capital stock for a partial payment of their unpaid subscriptions, for the purpose of satisfying the debts of the corporation, and that the circuit court of Henrico county, Va., to which the cause was removed, had jurisdiction to make its decree in chancery of March 26, 1886, for an additional assessment and call upon said subscribers, are propositions no longer debatable, in view of the decisions of the supreme court of appeals of Virginia in *Lewis' Adm'r* v. *Glenn*, 84 Va. 947, 6 S. E. Rep. 866, and *Hamilton* v. *Glenn*, 85 Va. 901, 9 S. E. Rep. 129, and the decisions of the supreme court of the United States in *Hawkins* v. *Glenn*, 131 U. S. 319, 9 Sup. Ct. Rep. 739; *Glenn* v. *Liggett*, 135 U. S. 533, 10 Sup. Ct. Rep. 867; and *Glenn*