

The conveyances to the bank are alleged to have been made in January, February, and March, 1884, and this suit was commenced March 26, 1890. No allegation of insolvency of the executor prior to the bringing of this bill is alleged, and this property appears to have been but a small part of the estates. In view of these dates and circumstances, this claim seems quite stale. The bill is dismissed as to the defendant Witters, and the residue of the cause is remanded to the court of chancery of the state, from which it was removed.

ST. LUKE'S CHURCH v. WITTERS et al.

(Circuit Court, D. Vermont. March 13, 1893.)

EXECUTORS—TRUSTEES—RIGHTS OF BENEFICIARIES TO FOLLOW PROPERTY.

The beneficiary of a permanent fund intrusted by a will to the executor, with sole and exclusive power of investment, and not made a charge upon any property, cannot follow into the hands of a third person property derived from the estate, which the executor transferred in his individual capacity after a decree of the probate court on settlement of the accounts, ordering payment of this and other legacies.

In Equity. Bill by St. Luke's Church against Chester W. Witters, as receiver of the First National Bank of St. Albans, and others, to reach assets alleged to be a portion of the estate of Susan B. Bellows, and have the same applied to a trust fund created by the will. Bill dismissed.

H. Charles Royce, for orator.
Chester W. Witters, pro se.

WHEELER, District Judge. Susan B. Bellows bequeathed \$5,000 to Edward A. Sowles, her executor, with full, sole, and exclusive power of investment as a permanent fund, the annual interest to go towards the expenses of the orator church, without bonds. This bill is brought to reach alleged assets of the estate in the hands of the defendant Witters, as receiver of the First National Bank of St. Albans, for the benefit of this fund, and has been submitted upon the same evidence as *Sowles v. Bank*, 54 Fed. Rep. 564, (heard at this term.) For the reasons given in that case, and others in relation to this subject, the bill must be dismissed.

Further, March 31, 1881, with ample assets in the hands of the executor, payment of this legacy, with others, was decreed by the probate court of the state, having jurisdiction. The substance of the complaint is that the executor afterwards became insolvent, and this legacy is unpaid. The probate court could do no more than it did about decreeing payment; and no more could be done about payment than that the executor should have in his hands, as trustee, the amount of this bequest, which he did, for he was both, and had enough for all. The legacy was not charged upon any of the property, and the trustee did not invest this bequest with the bank. Nothing is alleged about investment, but as the trustee had the amount of the legacy to invest somewhere, if he did not invest it

elsewhere, he must have left it invested with himself. He had, by the will, absolute control. The church does not seem to have a right to follow the rest of the estate for want of a safe investment of its legacy, merely. Bill dismissed.

SOWLES v. WITTERS et al.

(Circuit Court, D. Vermont. March 11, 1893.)

MORTGAGES—FORECLOSURE—EXTINGUISHMENT.

An executor holding two mortgages, with condition broken, on Vermont lands, took another mortgage of the same and other lands, individually, upon an agreement that the original mortgages should remain in force until the new mortgage was paid. Subsequently he foreclosed the last mortgage, and, after expiration of the time of redemption, took possession. *Held*, that this operated as a purchase of the land in satisfaction of the debt, and extinguished the original mortgages.

In Equity. Bill by Edward A. Sowles, executor, etc., against Chester W. Witters, receiver of the First National Bank of St. Albans, and George Bremmer, to foreclose certain mortgages. Decree dismissing bill.

Edward A. Sowles and Henry A. Burt, for orator.
Chester W. Witters, pro se.

WHEELER, District Judge. The orator, as executor, held two mortgages against the defendant Bremmer, with condition broken. Thereupon the mortgagor made another mortgage, of the same and other lands, for the same amount, with extended times of payment to the orator, individually. He foreclosed the latter, and, after the time of redemption expired, took possession. After that he mortgaged the whole to the First National Bank of St. Albans. The defendant Witters, as receiver, has foreclosed this mortgage, and the time of redemption has expired. This bill is brought to foreclose the two original mortgages, alleging an agreement between the orator and the mortgagor, at the time of the making of the second mortgage, that the original mortgages should not be discharged, but should remain in force until the second should be paid, and that, as fast as the principal and interest should be paid on the latter, the same should apply, and be payment upon the former, and that the mortgage to the bank was given upon individual indebtedness of the orator, with notice of the origin of the property.

A decree of foreclosure, with expiration of the time of redemption and possession, operates as a purchase of the estate in satisfaction of the debt. *Lovell v. Leland*, 3 Vt. 581; *Paris v. Hulett*, 26 Vt. 308; *Devereaux v. Fairbanks*, 52 Vt. 587. Thus the whole estate of the mortgagor, by the proceedings upon the orator's mortgage, passed to the orator, individually. The original mortgages were personal assets in the hands of the executor, and could be collected, assigned, or disposed of, as such, by him. *R. L. Vt. § 2150*; *Collamer v. Langdon*, 29 Vt. 32. When he converted the mortgages to his own use, he became chargeable for them, as for other personal assets. He