

cases is that when there is authority to make the contract, but some irregularity has occurred in its provision for payment or any other irregularity, which does not turn upon the power to make it, and a corporation has received the benefit of work done, it may be compelled to pay for it; but, when the contract is absolutely and directly prohibited by some statutory or constitutional enactment, the contract is void, and it cannot be enforced either as an express or implied contract; and so it must now be held of the one in question.

Defendant's counsel, in their brief, say that "the bridges remain, as they have always been, the property of plaintiff." With that view the court agrees, and now so holds. Certainly, this conclusion is a hardship upon plaintiff, which the court regrets, for it appears that the bridges were honestly constructed, and at a fair price; plaintiff says, below cost. While courts prefer enforcing contracts when honestly made and complied with, and to require all parties to pay for what they have the benefit of, yet they cannot and should not disregard such positive constitutional prohibitions as warned the parties in this case against the consummation of this contract. Unfortunately, there is so much ardor in the commercial world to transact business that the heed which should be given the law is obscured by the enticing profits of a business transaction. Important constitutional provisions for the protection of the people—and there is none upon the statute books of Idaho more important than the one in question—must be enforced, and those who are so heedless as to violate them must bear the consequences. Judgment for defendant.

PYATT v. WALDO et al.

(Circuit Court, S. D. New York. January 15, 1898.)

1. LIMITATION OF ACTIONS—REMEDY AND CAUSE OF ACTION—LIABILITY OF HEIR FOR ANCESTOR'S DEBT.

The statute of New York, providing that land of heirs and devisees may be taken in payment of debts of the ancestor or testator, gives a remedy only; the cause of action is founded on the obligation of the ancestor or testator to pay the debt; and the statute of limitations is available to the heir only as it would have been to the ancestor.

2. SUBJECTING HEIR'S REAL ESTATE TO PAYMENT OF ANCESTOR'S DEBT—PROOF OF INSUFFICIENT PERSONALTY.

Where the evidence is such as to leave no reasonable doubt that there were no personal assets of the ancestor for the payment of a debt, the real estate in the hands of the heir will be subjected to its payment.

3. LIABILITY OF THE HEIR OF AN HEIR FOR DEBTS OF THE ANCESTOR—ABSENCE OF STATUTORY PROVISION.

Since at common law the heir of an heir would be liable, to the extent of real estate received by him, for a specialty made by the ancestor, and expressed to be binding on heirs, notwithstanding such liability is not expressly created by the statute of New York, which provides that the lands of heirs or devisees can be taken in payment of debts of the ancestor or testator, it will be held to exist, and be enforced in equity, in the absence of an express decision on the point by the court of appeals, and in view of the conflicting decisions of the state courts.

Lord, Day & Lord, for complainant.
Goodrich, Deady & Goodrich, for defendants.

TOWNSEND, District Judge. This is a suit brought to collect from the heirs of Sarah C. H. Waldo, deceased, the amount due on a bond made by her in her lifetime. Said bond became due January 12, 1873. Said Sarah C. H. Waldo died in April, 1873. This action was commenced in February, 1891. The only party now defending is Rhinelander Waldo, a grandson of Sarah C. H. Waldo. Said Sarah C. H. Waldo devised all her real estate to her two sons, Horace and Francis, so that said Francis took the same interest as he would have taken if there had been no will. Said Francis subsequently deceased, leaving as his heirs three children, of whom the defendant Rhinelander is one. The one-sixth of the real estate which came to Rhinelander from his grandmother, through his father, is worth more than the one-sixth of the balance due on the bond sought hereby to be recovered from him. He makes three defenses: First, that the action is barred by the general statute of limitations in New York, providing that actions not specially mentioned must be brought within 10 years after the accruing of the cause of action; second, it has not been proved that Mrs. Waldo did not leave sufficient personal property to pay the debt of the plaintiff; third, that the statute of New York, providing that land of heirs and devisees can be taken in payment of debts of the ancestor or testator, does not apply to heirs of such heirs and devisees.

The question of the statute of limitations seems to be settled by *Colgan v. Dunne*, 50 Hun, 443, 3 N. Y. Supp. 309; and *Hauselt v. Patterson*, 124 N. Y. 349, 26 N. E. 937, both of which cases hold that, although the remedy is given by statute, the cause of action is founded upon the obligation of the ancestor to pay the bond, and that the statute of limitations is no more available to the heirs than it would have been to the ancestor. The bond being under seal, by the statutes of New York the action may be brought within 20 years from its maturity, as has been done. Defendant makes no claim under the statute of limitations of South Carolina, where said bond was payable. Moreover, the statute of limitations has not been pleaded as a defense.

The evidence is such as to leave no reasonable doubt that there were no personal assets available for the payment of this bond, and no evidence or claim is made to the contrary, and in the circumstances it should be held sufficient.

Inasmuch as the real estate left by Mrs. Waldo was devised to her sons in exactly the same manner as they would have inherited, they take as heirs. 4 Kent, Comm. 594; *Buckley v. Buckley*, 11 Barb. 43. In *Fink v. Berg*, 50 Hun, 211, 2 N. Y. Supp. 851, it is held that the statute of New York does not render the heir of a devisee liable for the debts of a testator, and, as it is declaratory of the rights of the creditor, and the liability of the heir of a devisee has not been created, it cannot be maintained under the provisions of the law. The authorities cited in the exhaustive brief of counsel for complainant seem to establish that at common law the heir of an heir would be liable, to the extent of the real estate received by him, for a specialty made by the ancestor, and expressed to be binding upon heirs. And it also appears that this liability can be enforced by a court of equity. *Chewett v. Moran*, 17 Fed. 820, and other cases there cited. *Traud v. Magnes*, 49 N. Y. Super. Ct. 309, holds directly that the indebtedness of an ancestor follows the

real estate into the hands of the heir or his devisee. This case, although directly contrary to *Fink v. Berg*, and five years earlier, is not there mentioned. *Colgan v. Dunne*, supra, says that the remedy, and not the right of action, is given by statute; and *Hauselt v. Patterson*, supra, takes the same view. In the absence of any express decision on the point involved by the court of appeals of New York, and in view of the conflicting decisions, that conclusion which is most agreeable to the common law, to justice, and the course of equitable procedure should be adopted. Let a decree be entered for complainant.

WESTERN COMMERCIAL TRAVELERS' ASS'N v. SMITH.

(Circuit Court of Appeals, Eighth Circuit. February 14, 1898.)

No. 931.

1. ACCIDENT INSURANCE—NOTICE OF INJURY OR DEATH.

An accident policy provided that, in case of "any accident or injury for which any claim shall be made under this certificate, or in case of death resulting therefrom, immediate notice shall be given in writing," with full particulars of the accident, and that a failure to give such notice should invalidate the claim. *Held*, that two classes of notices were intended,—one an immediate notice of the accident or injury when not resulting in death, and the other an immediate notice of death resulting from accident or injury, the latter to be given by the beneficiary; and that a notice so given in the latter case was sufficient, though no notice of the injury was given before death.

2. SAME—"ACCIDENTAL MEANS" DEFINED.

If a disease resulting in death is the effect of an accident, so as to be a mere link in the chain of causation between the accident and the death, the death is attributable, not to the disease, but to the accident alone.

3. SAME.

Where blood poisoning results from an abrasion of the skin of a toe by a new shoe, and death follows, the death is properly attributable to "bodily injuries effected by external, violent, and accidental means," within the meaning of an accident policy.

4. SAME.

"Accidental means" are those which produce effects which are not their natural and probable consequences. An effect which is a natural and probable consequence of an act, or course of action, is not an accident; but one which is not the natural and probable consequence of an act, or course of action, is produced by accidental means, and is an accident.

In Error to the Circuit Court of the United States for the Eastern District of Missouri.

F. N. Judson (C. S. Taussig and Louis R. Tatum, on the brief), for plaintiff in error.

S. L. Swarts (E. M. Merriman and George H. Sanders, on the brief), for defendant in error.

Before SANBORN and THAYER, Circuit Judges, and PHILIPS, District Judge.

SANBORN, Circuit Judge. The Western Commercial Travelers' Association, the plaintiff in error, has sued out a writ to reverse a judgment against it upon a certificate of insurance against accident which it issued to Freeman O. Smith, one of its members, for the benefit of