

"The question thus raised is whether this court has jurisdiction to call an administrator to account, who has, in the course of his trust, defrauded the estate, notwithstanding the probate court which appointed him may have passed a decree finally settling his accounts and discharging him. That the court has this jurisdiction, we think, can be satisfactorily shown. The frauds charged in this bill are not shown to have been investigated or passed upon by the probate court, but to have been concealed from that court; and it would indeed be against conscience, and a subversion of justice, if an administrator, while confessing a fraudulent management of the assets of the estate under his care, could successfully plead in bar of a suit like this, by the defrauded heirs, the final settlement of his accounts by the probate court." 28 Fed. Cas. 949.

The question here raised was presented to the supreme court, and decided, in *Payne v. Hook*, 7 Wall. 425. In that case the court says:

"If this position could be maintained, an important part of the jurisdiction conferred on the federal courts by the constitution and laws of congress would be abrogated. As a citizen of one state has the constitutional right to sue a citizen of another state in the courts of the United States, instead of resorting to a state tribunal, of what value would that right be if the court in which the suit is instituted could not proceed to judgment, and afford a suitable measure of redress? The right would be worth nothing to the party entitled to its enjoyment, as it could not produce any beneficial results. But this objection to the jurisdiction of the federal tribunals has been heretofore presented to this court and overruled."

It is unnecessary to cite further authorities to sustain the jurisdiction of the court of this suit. The demurrer will be overruled, with leave to the demurrants to answer.

STRAINE v. BRADFORD SAVINGS BANK & TRUST CO.

(Circuit Court, D. Vermont. May 25, 1898.)

JURISDICTION—FEDERAL AND STATE COURTS—PROCEEDINGS FOR DISSOLUTION OF CORPORATION.

Proceedings brought by a public officer under a state statute for the winding up of a corporation, and the appointment of a receiver therein, do not deprive the circuit court of the United States of jurisdiction to proceed with a suit in equity brought by a stockholder, who is a resident of another state, against the corporation, for the adjustment of mutual claims, and to enjoin any disposition of his stock held by the corporation in pledge.

William M. Stockbridge and Gilbert A. Davis, for plaintiff.
W. B. C. Stickney and John H. Watson, for defendant.

WHEELER, District Judge. An original bill was brought herein to compel a set-off of claims of the orator against claims of the defendant, and for a decree for the balance, and to prevent disposition of securities held by the defendant as collateral, and for a sequestration of defendant's property, in nature of an attachment, which was had. A supplemental bill has been brought to prevent, by injunction, disposition of, and voting upon, the orator's stock in the defendant company, also held as collateral, and an injunction has been granted. Proceedings brought since by the inspector of finance of the state in the state court of chancery, wherein a receiver has been appointed for winding up the affairs of the defendant, and ratably dis-

tributing its assets among creditors, have been pleaded to the supplemental bill, and the plea has been argued.

An institution of this kind may be proceeded against in this way for other causes than insolvency. V. S. § 4054. Whether this proceeding is because of insolvency, which would leave the stock worthless, or for some other cause, which might leave it of value, is not set forth in the plea. It might belong to the orator again, with the other collaterals, upon satisfaction of the defendant's claims against him by set-off, or otherwise, and the trial of this cause might be necessary to settle the question of such satisfaction. The case of *Relfe v. Rundle*, 103 U. S. 222, is relied upon to show that the receivership would draw all questions relating to the property and claims to those proceedings. In that case, however, it was held that similar state proceedings to wind up a corporation did not prevent trying questions concerning them between citizens of different states in the United States courts; and the judgment was reversed for that purpose. In *Railroad Co. v. Gomila*, 132 U. S. 478, 10 Sup. Ct. 155, the court held that proceedings in a state probate court upon the death of a defendant in the United States circuit court would not withdraw property from seizure on process of that court. And in *Coal Co. v. McCreery*, 141 U. S. 475, 12 Sup. Ct. 28, the court held that proceedings in a court of Ohio to wind up an Ohio corporation would not withdraw property of the corporation from the effect of a decree in the United States circuit court. The earliest cases on this subject were reviewed in these cases, and the principles applicable to these questions were deduced from them. In the latter case, Mr. Justice Brewer said:

"The circuit court takes its jurisdiction, not from the state of Ohio, but from the United States; and the extent of its jurisdiction is not determined by the laws of the state, but by those of the United States. Doubtless, while sitting in the state, as a court of the United States, it accepts and gives effect to the laws of the state, so far as they do not affect its jurisdiction and the rights of nonresident creditors. It nevertheless exercises powers independent of the laws of the state; and when, in pursuance of the jurisdiction conferred by the laws of the United States, it takes possession of the property of a defendant, and proceeds to final decree, determining the rights of all parties to that property, its decree is not superseded, and its jurisdiction ended, by reason of subsequent proceedings in the courts of the state looking to an administration of that property in accordance with the laws of the state."

According to these principles, the orator here, as a citizen of another state, had the right to have the claims in controversy, that must be adjusted in order to ascertain his right to the stock which is the subject of the supplemental bill, tried and determined in this court. The state court has not, by the appointment of the receiver, attempted to interfere at all with this right, and this court cannot properly deny it. Plea overruled.

FEWLASS et al. v. KEESHAN et al.

(Circuit Court of Appeals, Sixth Circuit. July 5, 1898.)

No. 533.

1. PRINCIPAL AND SURETY—COST BONDS—DEATH OF SURETY.

There being no power to release a surety on a cost bond without the consent of the party for whose benefit the bond is given, the contract is not terminated by the death of the surety, and his estate is bound for costs thereafter accruing.

2. SAME—EFFECT OF ADDITIONAL BOND.

The fact that, after the death of a surety on a cost bond, the party is required to give an additional bond, does not release the estate of the deceased surety from liability for costs subsequently accruing.

3. LIMITATIONS—ACCRUAL OF CAUSE OF ACTION—NUNC PRO TUNC ENTRY.

Limitation does not begin to run against an action on a cost bond until the rendition of judgment for costs against the principal. The fact that such judgment is entered nunc pro tunc, as of a prior date, does not affect the operation of the statute.

4. ADMINISTRATORS—DISCHARGE—NECESSITY OF ORDER.

The mere filing by an administrator of a statement and affidavit that he has neither received nor paid out anything, and knows of no debts against the estate, and asking that it be accepted as a final report, and he be discharged, will not operate as a settlement and discharge, in the absence of any order of court relating thereto.

Appeal from the Circuit Court of the United States for the Southern District of Ohio.

C. W. Baker, for appellants.

J. C. Harper, for appellees.

Before TAFT and LURTON, Circuit Judges, and CLARK, District Judge.

TAFT, Circuit Judge. This is an appeal from the decree of the circuit court against Howard Ferris, the administrator of Samuel Cooper, deceased, and Hannah Cooper Fewlass, his sole heir and next of kin, on a cost bond entered into by Cooper shortly before he died for the amount of the costs adjudged to be due from the complainants in the case, most of which accrued after Cooper's decease. The bond was in the form following:

"In the Circuit Court of the United States for the Southern District of Ohio.

"Sarah E. McCloskey et al. v. Samuel Barr et al. Cost bond.

"I hereby acknowledge myself security for costs in this case.

"Samuel Cooper.

"Taken and acknowledged before me this 15th day of September, 1887.

"Robert C. Georgi,

"Deputy Clerk United States Circuit Court, Southern District of Ohio."

After a decree for costs was rendered against complainants in the action, the administrator and the heir and next of kin of Cooper were duly notified of the filing of a petition by the successful parties for a decree against them, and, after pleadings were filed raising various issues, evidence was taken, and the decree for the full amount of costs, now appealed from, was entered.