

tor wisely placed in trust for his daughter's support; nor is he defrauded of any right which his contract gave him by upholding this trust. *Nichols v. Eaton*, 91 U. S. 716, 726. While the argument for the complainant has been presented with such ability and learning as to entitle it to careful consideration, I am of the opinion that it cannot prevail, since the restraints imposed by the testator upon alienation or anticipation were valid; and to charge this trust estate upon a contract made by the testator's daughter while under such restraint would be to hold, in effect, that a married woman, though restrained from anticipation, could anticipate.

The demurrer is sustained.

HAYDEN v. BROWN et al.

(Circuit Court, D. Vermont. March 17, 1899.)

EQUITY JURISDICTION—RECEIVERS OF NATIONAL BANKS—SUIT TO RECOVER DIVIDENDS.

A receiver of an insolvent national bank may maintain a suit in equity in any district against all the stockholders within the court's jurisdiction to recover back unearned dividends received by them, and unlawfully paid from the bank's capital when insolvent, on the ground that it is a suit to follow trust funds.

In Equity.

Wilder L. Burnap, for plaintiff.

Daniel Roberts, for defendants.

WHEELER, District Judge. This suit is brought by the plaintiff, as receiver of the Capital National Bank of Lincoln, Neb., to recover back dividends paid to the defendants severally, as shareholders, from capital, and not from profits. It has been heard on amended pleadings. All of the points raised seem to be covered by *Hayden v. Thompson*, 17 C. C. A. 592, 71 Fed. 60, on appeal from the circuit court of the district of Nebraska, except that the bank itself was in that district. Since this case was heard, a decree has been made in a suit against several persons for their respective shares in these same dividends, in the Southern district of New York, not reported, which was supposed to have been appealed from. A decision on appeal has been awaited here, but the decision of the circuit court appears to have been acquiesced in. Nothing appears to remain to be done here now but to follow those cases, from which the orator appears to be entitled to a decree against the defendants, respectively, for the amount of the face of the dividends respectively received by each within the period of the statute of limitations here set up. Decree for plaintiff against defendants, respectively, for dividends not barred by statute of limitations.

CENTRAL NAT. BANK OF CAMBRIDGE, OHIO, v. FITZGERALD et al.

(Circuit Court, D. Nebraska. May 15, 1899.)

1. EQUITY — LACHES — FAILURE OF CREDITORS TO CONTEST ALLOWANCES BY PROBATE COURT.

A court of equity will not grant relief to creditors of an estate against alleged extravagant allowances by a probate court to the family of the decedent or the attorneys for the estate, where it is not shown that the probate court was fraudulently imposed upon, or that the complainants were prevented by fraud from contesting the allowances in such court.

2. SAME—JURISDICTION—UNSETTLED ESTATE.

A court of equity is not precluded from entertaining a suit by creditors of an estate to set aside a payment by the administratrix to one creditor to the exclusion of the others, alleged to have been made through a fraudulent agreement between the favored creditor and the administratrix, because the estate is still unsettled, the pendency of the administration in the probate court being a matter for consideration only in relation to the disposition to be made of the fund in case of recovery.

3. JURISDICTION OF FEDERAL COURTS—PENDENCY OF ADMINISTRATION IN PROBATE COURT.

The fact that a transfer of property by an administratrix was made with the sanction of a state probate court, and that the estate is unsettled, and the administration still pending in such court, does not deprive a federal court of equity of jurisdiction of a suit to set aside such transfer on the ground of fraud, where the complainant is a citizen of another state, and the requisite amount is involved.¹

4. EQUITY—SUIT AGAINST ADMINISTRATRIX.

A bill by creditors of an estate against the administratrix and her attorney, alleging that the administratrix is the real owner of a claim against the estate, which has been in form transferred to her co-defendant, and that they have combined to subject property of the estate situated in another state to the payment of the claim to the exclusion of the other creditors, states a cause of action for equitable relief, as the administratrix, if in fact the owner of the claim, cannot properly represent the estate in proceedings relating to such claim.

5. SAME—MULTIFARIOUSNESS OF BILL.

A bill by creditors of an estate against the administratrix and two other defendants to set aside a transfer of property of the estate by the administratrix to one of her co-defendants as fraudulent, and which also seeks relief as to a separate transaction between the administratrix and the other co-defendant, in which the transferee of the property has no interest, is multifarious.

On Demurrer to Bill.

Burr & Burr, for complainant.

Harwood & Ames and James Manahan, for defendants.

SHIRAS, District Judge. The bill in this case was filed by the Central National Bank of Cambridge, Ohio, on its own behalf and on behalf of such other creditors of John Fitzgerald, now deceased, who may desire to participate in the benefits of the litigation, it being averred in the bill that the complainant is a creditor of the estate of John Fitzgerald; that Fitzgerald died in the city of Lincoln, Neb., on the 30th day of December, 1894, intestate; that early in 1895 letters of administration were duly issued by the county court of

¹ For jurisdiction of federal courts in probate matters, see note to Barling v. Bank, 1 C. C. A. 514.