

rupt continued to reside in Utah for more than five years thereafter, namely, until September, 1895, when he removed with his family to this city. His petition in bankruptcy was filed in January, 1899. The period of limitation for the commencement of actions on judgments in this state is 20 years (Code, § 376); but a special provision (section 390) enacts as follows:

"Where a cause of action \* \* \* accrues against a person who is not then a resident of the state, an action cannot be brought thereon in a court of the state against him or his personal representative, after the expiration of the time limited by the laws of his residence for bringing a like action, except by a resident of the state, \* \* \* (1) where the cause of action originally accrued in favor of a resident of the state; or (2) where before the expiration of the time so limited, the person, in whose favor it originally accrued, was or became a resident of the state; or the cause of action was assigned to, and thereafter continuously owned by, a resident of the state."

From the above provisions it is evident that at the time the petition in bankruptcy was filed, the claim of these creditors was barred by the statutes of limitation, not only in the states of Utah and California where the parties then resided, and where the judgment was obtained, but also in this state. Many, if not all, of the states have provisions similar to that of section 390 of the Code of this state above cited; and the principle of such statutes as statutes of repose, interstate comity and the public convenience, required the general application of that rule. By the federal law the state statute of limitation is ordinarily applied in legal proceedings arising within the state. Notwithstanding the decision in the case of *In re Ray*, 1 N. B. R. 203, Fed. Cas. No. 11,589, I think the weight of authority and of sound reason requires the claim to be expunged (*In re Cornwall*, 9 Blatchf. 114, 126, 137, 138, 6 N. B. R. 305, Fed. Cas. No. 3,250, and cases there cited; *In re Noesen*, 12 N. B. R. 422, Fed. Cas. No. 10,288; *In re Kingsley*, 1 N. B. R. 329, Fed. Cas. No. 7,819; *In re Harden*, 1 N. B. R. 395, Fed. Cas. No. 6,048), and the decision of the referee is therefore sustained.

The insertion of this debt in the schedules of the bankrupt was no revival of the claim. The rights of other creditors to the assets, if there are any assets, could not be thus prejudiced.

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In re CLIFFE.

(District Court, E. D. Pennsylvania. June 2, 1899.)

No. 45.

1. **BANKRUPTCY—SUFFICIENCY OF PETITION—WAIVER OF OBJECTIONS.**

A petition in involuntary bankruptcy which alleges, as the act of bankruptcy on which an adjudication is asked, that the debtor suffered creditors to obtain a preference through legal proceedings, is insufficient if it merely follows the words of the statute, without specifying the details of the transaction constituting the preference. But this defect is amendable, and is waived by the respondent if he files a general denial, and demands a trial by jury.

2. **SAME—ACTS OF BANKRUPTCY—SUFFERING PREFERENCE.**

Under Bankruptcy Act 1898, § 3, cl. 3, providing that it shall be an act of bankruptcy if a debtor shall have "suffered or permitted, while in-

solvent, any creditor to obtain a preference through legal proceedings," and has not vacated or discharged such preference "at least five days before a sale or final disposition of any property affected," where suit is brought against an insolvent debtor, and he makes no defense, and judgment is rendered against him, and execution issued and levied on his goods, and he allows a sale thereunder to be made without applying to be adjudged bankrupt, he commits an act of bankruptcy.

In Bankruptcy. On motion for new trial.

Andrew W. Crawford, for petitioning creditors.

John S. Freeman, for the bankrupt.

McPHERSON, District Judge. The petition avers that Walter R. Cliffe is insolvent, and charges as an act of bankruptcy that "on the 27th day of January, 1899, [he] suffered, while insolvent, other creditors to obtain a preference through legal proceedings, and not having at least five days before sale or final disposition of his property affected by such preference vacated such preference." Suits had been brought against him, upon which judgments had been obtained shortly before the petition was presented, followed by executions and a sheriff's sale of his personal property. He made no defense to the suits, and allowed the sale to be held without applying to be adjudged a bankrupt. He answered the petition, denying "that he had committed the act of bankruptcy set forth in said petition," averring "that he should not be declared bankrupt for any cause in said petition alleged," and demanding "that the same may be inquired of by a jury." At the trial he objected orally to the insufficiency of the petition, but his objection was overruled, and the jury were instructed that he had committed an act of bankruptcy if he was insolvent at the time the executions were issued. His answer did not aver that he was solvent when the executions were levied, and it may be that his silence upon this point was equivalent to an admission of insolvency. Nevertheless, the question of insolvency was treated as a disputed question of fact, and to this issue the evidence was almost exclusively directed. The jury found the fact against him, and he now asks for a new trial, mainly on the ground that the petition is insufficient, because it does not specify the details of the preference charged. This would have been a good objection if it had been made in season, either by a motion to dismiss the petition or by the answer. But, as the defect is clearly amendable, the objection was too late at the trial, and is too late now. It was waived by demanding an issue on the merits, and requiring the petitioning creditors to prepare for trial on the disputed facts. The bankrupt's failure to vacate the preference obtained by the levy brings the case within the principle of *In re Moyer*, 8 Pa. Dist. R. 214, 93 Fed. 188. The motion for a new trial is refused, and judgment for the plaintiffs in the issue will be entered on the verdict. It is also ordered that Walter R. Cliffe be adjudged a bankrupt.

## KLIPSTEIN et al. v. UNITED STATES.

(Circuit Court, S. D. New York. January 27, 1899.)

No. 2,572:

## CUSTOMS DUTIES—CLASSIFICATION—ALIZARINE VIOLET.

Alizarine violet, known as "alizarine cyanine R" was entitled to free entry as an alizarine color or dye, under paragraph 368 of the act of 1894, and was not dutiable as a coal-tar product, under paragraph 14 of said act.

This was an application for a review of a decision of the board of general appraisers in respect to the classification for duty of a certain color or dye known as "alizarine violet." The evidence showed that the merchandise was commercially known as an artificial alizarine color or dye, first imported in October, 1894; and that it was a product of alizarine Bordeaux, which is a product of the oxidation of alizarine. The merchandise was classified by the collector, and by the board of general appraisers on appeal, as a coal-tar product, at 25 per cent. ad valorem, under paragraph 14 of the tariff act of August 28, 1894.

Edward Hartley, for appellants.

James T. Van Rensselaer, Asst. U. S. Atty.

WHEELER, District Judge. This importation was called "alizarine violet," and appears to have been known as "alizarine cyanine R." The question about it is whether it is a coal-tar, or an alizarine, color or dye. The decision heretofore filed was made upon the testimony of one of the importers taken before the board, without that of the same witness taken in this court, which had not been sent. That testimony indicated that it was a coal-tar color with some doubt, arising somewhat, perhaps, from the fact that artificial alizarine is produced from anthracene, which is a coal-tar product. *Cochrane v. Soda Fabrik*, 111 U. S. 293, 4 Sup. Ct. 455. The decision of the board upon that evidence was followed. The testimony taken in this court, considered with, and notwithstanding, that given before, seems to show fairly that it is, and was known as, an artificial alizarine color or dye. This leads to an opposite conclusion from that reached before. Affirmance set aside, and decision reversed.

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 UNITED STATES v. TUBBS.

(District Court, D. South Dakota, S. D. May 24, 1899.)

## 1. INDICTMENT FOR MAILING PROHIBITED MATTER—SUFFICIENCY—IDENTIFICATION OF LETTER.

An indictment under Rev. St. § 3893, charging the defendant with having deposited in a post office, for mailing and delivery, a letter giving information where, how, and of whom might be obtained an article designed and intended for the procuring of abortion, must in some manner identify such letter, to the end that the accused may be informed of the nature of the charge, and that a judgment may be pleaded in bar to a second prosecution for the same offense; and the letter should be set out in the indictment, or a sufficient reason given for not doing so.