

Richards v. Maryland Insurance Co.

the owner or consignee, they would have continued it, till the goods should be landed in safety, and should perform their quarantine.

The court is of opinion, that under this policy, the goods in the Lazaretto were not at the risk of the underwriters, and consequently, that there is no error in the judgment of the circuit court. It is affirmed, with costs.

Judgment affirmed.

GRACIE v. MARYLAND INSURANCE COMPANY.

MARSHALL, Ch. J.—This case differs from that against the Marine Insurance Company of Baltimore only in one particular. A part of the cargo remained on board the ship, until the arrival of the French troops, when the departure of the vessel was prohibited by the general, and the ransom made. This circumstance does not, in the opinion of the court, vary the case; because, omitting all other considerations, the loss, within the risk, being on only a part of the cargo, is a partial loss, and is affected by the warranty against particular average loss. This judgment is also to be affirmed, with costs.

Judgment affirmed.

RICHARDS and others, assignees of McKean, a bankrupt, v. MARYLAND INSURANCE COMPANY. (a)

Bankruptcy.—Statute of limitations.

Upon the death of an assignee under the bankrupt law of the United States, the right of action, for a debt due to the bankrupt, vested in the executor of the assignee.

If an executor do not cause himself to be made party to a suit, brought in the lifetime, and in the name, of the testator, and pending at his death, it is to be considered as a voluntary abandonment of the action, so as to exclude the executor from the equity of the exceptions to the statute of limitations.

Quære? Whether the commissioners of bankrupt had a right to appoint a second assignee, in case of the death of the first?

At common law, no action could be renewed by journey's accounts, in a case of voluntary abandonment.

ERROR to the Circuit Court for the district of Maryland, in an action of covenant, on a policy of insurance *under seal. The defendants
*85] pleaded the Maryland statute of limitation of twelve years (1715, ch. 23, § 6), which enacts, "that no specialty whatsoever, shall be good and pleadable, or admitted in evidence against any person or persons of this province, after the principal debtor or creditor have been both dead twelve years, or the debt or thing in action above twelve years standing," with a saving of five years in cases of infancy, &c.

The replication to this plea stated, in substance, the following facts: That the cause of action accrued on the 1st of May 1797; that McKean was declared a bankrupt, on the 19th of March 1801, his estate was duly assigned to Thomas Allibone, who, on the 6th of October 1806, instituted a suit on the policy, and died on the 1st of August 1809, whereby the suit was abated. That on the 11th of January 1810, the plaintiffs were, by the commis-

(a) February 11th, 1814. Absent, WASHINGTON, Justice.