

Browne v. Strode.

the court consider his interest as being one undivided third of the fund. This third goes to his assignees.

As the bankrupt law of a foreign country is incapable of operating a legal transfer of property in the United States, the remaining two-thirds of the fund are liable to the attaching-creditors, according to the legal preference obtained by their attachments.

The court thinks it equitable, to order that those creditors who claim under the deed of the 31st of January 1803, and who have not proved their debts under the commission of bankruptcy, should be now admitted to the same dividend out of the estate of the bankrupt as they would have received, if, instead of relying on the deed, they had proved their debts. The assignees, therefore, take this fund subject to that equitable claim, and in making the dividend, those creditors are to receive, in the first instance, so much as will place them on an equal footing with the creditors who have proved their debts under the commission.

With respect to any surplus which may remain of the two-thirds, after satisfying the United States, and the attaching-creditors, it ought to be divided equally among all the creditors, so as to place them on an equal footing with each other. The dividends paid by the British assignees, and those made by the American assignees, being taken into consideration, this residuum is to be so divided between them as to produce equality between the respective creditors.

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Federal jurisdiction.

The courts of the United States have jurisdiction in a case between citizens of the same state, if the plaintiffs are only nominal plaintiffs, for the use of an alien.¹

THIS was a case certified from the Circuit Court for the district of Virginia, the judges of that court being divided in opinion upon the question whether they had jurisdiction of the case.

It was an action on a bond given by an executor for the faithful execution of his testator's will, in conformity with the statute of Virginia. The object of the suit was to recover a debt due from the testator, in his lifetime, to a British subject. The defendant was a citizen of Virginia. The persons named in the declaration as plaintiffs were the justices of the peace for the county of Stafford, and were all citizens of Virginia.

The question being submitted without argument,

THE COURT ordered it to be certified, as their opinion, that the court below has jurisdiction in the case.

¹ *Irvine v. Lowry*, 14 Pet. 293; *McNutt v. Bland*, 2 How. 1; *Walden v. Skinner*, 101 U. S. 577, 589; *Ward v. Arredondo*, 1 Paine 410.