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Kinder Vs. Scharff

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Court : US Supreme Court

Decided On : Dec-15-1913

Appeal No. : 231 U.S. 517

Appellant : Kinder

Respondent : Scharff

Judgement :

Kinder v. Scharff - 231 U.S. 517 (1913)
U.S. Supreme Court Kinder v. Scharff, 231 U.S. 517 (1913)

Kinder v. Scharff

No. 99

Argued December 4, 5, 1913

Decided December 15, 1913

231 U.S. 517

ERROR TO THE SUPREME COURT

OF THE STATE OF LOUISIANA

SYLLABUS

After the estate has been closed and the two-year period prescribed by 11d of the Bankruptcy Act has run, the proceeding cannot be reopened on *ex parte* statements to enable the trustee to attack on the ground of fraud a sale made by the bankrupt where, as in this case, the trustee had the opportunity of commencing an action for that purpose before the expiration of the period.

The Bankruptcy Court cannot, under 2(8), remove the bar of 11d at its own will simply because the trustee may have changed his mind and wishes to institute a suit which he might have instituted prior to the operation of 11d.

129 La. 218 affirmed.

The facts, which involve the construction and application of the limitation prescribed by 11d of the Bankruptcy Act of 1898, are stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

This is an action by a trustee in bankruptcy to recover land alleged to have been conveyed by the bankrupt in fraud of creditors. The defendant pleaded that the estate had been closed and that the action was barred by the lapse of two years, under 11d of the Bankruptcy Act, and also that he purchased the land for its full value and in good faith. The estate had been closed, and the two years had run, but, after they had elapsed, the former trustee petitioned to have the proceedings reopened on the ground that he had just discovered the facts, and that the sale should be set aside. The petition was granted, this suit was brought, and the judge of first instance ordered a reconveyance. The Supreme Court of Louisiana found, as it was compelled to by the testimony of the trustee himself, that, during the pendency of the original proceeding, the trustee suspected the alleged fraud, made some inquiries, but dropped the matter because he thought that it was not worthwhile -- that is, that it would not pay to go farther: He "voluntarily abstained

from availing himself of the means put in his hand by the law itself for the ascertainment of a suspected fact," by examining the bankrupt and otherwise. On this ground, the court held that he could not remove the bar of the statute, reversed the judgment, and dismissed the suit. 129 La. 218.

We are of opinion that the decision of the supreme court was right. It is not necessary to consider whether the running of the two years after the estate is first closed is a bar to all suits upon claims that might have been collected if they had been known, or to controvert the conclusion of *Bilafsky v. Abraham,* 183 Mass. 401, that such suits are not barred. But it is obvious that there must be some limits if the promise of repose after two years in 11d is not to be a mirage. The power to reopen

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estates given in 2(8) "whenever it appears [that] they were closed before being fully administered" cannot be taken to put it into the power of the court of bankruptcy to remove the bar of 11 at its own will simply because a trustee may have changed his mind. It was argued that the court of first instance found fraud, and that we could not review the findings of fact. *Waters-Pierce Oil Co. v. Texas,* 212 U. S. 86 , 212 U. S. 97 . But, if so, we equally are barred from reviewing the findings of the supreme court, that the trustee was chargeable with knowledge of the fraud, if there was one. Therefore, a part from the difference between the statutes considered there and here, cases like *Bailey v. Glover,* 21 Wall. 342, and *Traer v. Clews,* 115 U. S. 528 , where the cause of action for fraud was concealed, do not apply. The question is simply whether, when, after an estate is closed and more than two years later, a trustee comes to the conclusion that he undervalued a claim that he knew of and might have sued upon, or finds that the value has risen since, the bankruptcy court may reopen the estate for the sole purpose of getting rid of the statute and allowing the trustee to sue. *See Wood v. Carpenter,* 101 U. S. 135 ; *Rosenthal v. Walker,* 111 U. S. 185 , 111 U. S. 196 .

The judge had no power, by an *ex parte* order reopening the estate, to remove the bar that was completed and that there was no ground for removing. Whether it be put on the construction of the Bankruptcy Act or on the ground that the estate was fully administered *quoad hoc,* or of laches on the part of the trustee, it comes to the same thing. The claim in controversy cannot be made the ground of a suit.

Judgment of the Supreme Court affirmed.

MR. JUSTICE PITNEY concurs in the result.

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