

MEIER ET AL. V. KANSAS PAC. BY. ET AL.

{4 Dill. 378.}¹

Circuit Court, D. Kansas.

1877.

UNITED STATES—SUITS AGAINST—MORTGAGEE.

Whether the United States can compulsorily be made a defendant to a foreclosure bill where it holds a lien or mortgage on the property in respect of which the foreclosure is sought, quaere?

The bill [by Adolphus Meier and others against Kansas Pacific Railway and others], which was originally filed in the state court, seeks to foreclose a mortgage on the railway and property of the Kansas Pacific Company—one of the companies aided by congress in what is known as the Pacific system of railroads. The United States, under the legislation of congress, has certain rights in and liens on the property, and was made a defendant to the bill, but has entered no appearance.

After the suit was removed to this court, the complainants' solicitor made the application set forth in the opinion of the court.

J. P. Usher, for the motion.

Before MILLEB, Circuit Justice, and DILLON, Circuit Judge.

PER CURIAM. The solicitor for the complainants has filed in this court the following motion: "Complainants move the court that a motion, under the seal of this court, he issued, respectfully addressed to the attorney-general of the United States, notifying him that a suit has been instituted against the United States of America in this court, accompanied by a copy of the petition or bill of complaint, and requesting the attorney-general to appear and state whether the United States of America claim any rights in the

premises which are the subject matter of this action, and whether the United States desire any adjudication of their rights in the premises to be made, and to show cause, if any he has, why the prayer of the bill shall not be granted. J. P. Usher, Solicitor for Complainants.”

In support of this application, the complainants’ solicitor has referred the court to the case of *Elliot v. Van Voorst* [Case No. 4,390], in which the late Mr. Justice Grier held that a mortgagee may have an effectual decree of foreclosure where the United States is the owner of the equity of redemption, on a notice given in such manner as the court may prescribe, if the land be not held for government purposes.

We grant the motion for which the complainants ask, but we do not thereby commit the court to the proposition that it can, on the final hearing, pronounce a decree against the United States without an authorized appearance by the attorney-general. This question is reserved. That officer, on being notified of this order, can take such action as he may be advised by asking the direction of congress, or by appearing or declining to appear In the cause on behalf of the United States. Let an order be entered and served in conformity with the motion. Ordered accordingly.

Subsequently the attorney-general directed the district attorney to apply for leave for the United States to enter its appearance and to plead.

¹ [Reported by Hon John F. Dillon, Circuit Judge, and here reprinted by permission.]

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