

stockholders of one company. This would not be sufficient even if the allegations applied to both companies; much less is it sufficient where they apply to one only.

Persons subscribing to the capital stock of a corporation are bound to take notice of the law creating it and defining its powers, and if the directors, in order to secure subscriptions to such stock, propose to do that which they are prohibited from doing by the terms of the statute defining their powers, no subscriber can be heard to say, as against the corporation, that he has been misled and deceived thereby. All that subscribers to the capital stock in this case had a right to assume, was that the lease would be executed in accordance with law, provided a meeting of stockholders should be held, and the same should be assented to by the holders of two-thirds of the stock of both corporations concerned.

Every subscriber to the stock of the Lincoln & Northwestern Railroad Company was bound to know that no valid lease could be executed, except in compliance with the statute above referred to.

The allegation that the directors of the Atchison & Nebraska Railroad Company was bound to know that no valid lease could be executed, except in compliance with the statute above referred to.

The allegation that the directors of the Atchison & Nebraska Railroad company acted in bad faith, and did not intend to vote for a lease, in case a stockholders' meeting should be called, is not sufficient to authorize the execution and enforcement of such a lease contrary to the statute and without the assent of the stockholders, as required thereby.

The demurrer to the amended bill is sustained.

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### BUSH v. UNITED STATES.

(Circuit Court, D. Oregon. November 8, 1882.)

#### PRIORITY OF THE UNITED STATES.

The priority of the United States under sections 3466, 3467, of the Rev. St. does not attach in the life-time of an insolvent debtor unless his property is taken by process of law, as in bankruptcy, insolvency, or attachment, or he makes a voluntary assignment thereof to a third person for the benefit of his creditors; and a judgment or judgments confessed by such debtor for an amount equal to the value of his assets, with intent to hinder, delay, or defraud the United States, is not such an assignment.

Bill of Review.

*George H. Williams*, for plaintiffs.

*James F. Watson*, for defendants.

DEADY, D. J. This case was before this court on October 2d,\* on a motion of the district attorney to dismiss the bill of review for want of jurisdiction. The motion having been denied, the defendant demurred, and the cause was argued and submitted on the bill and demurrer.

The first question for consideration is, had the United States, upon the facts stated and found, a right of priority of payment out of the property of Griswold on January 6, 1879, by virtue of section 3466 of the Revised Statutes? which reads:

"Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor in the hands of the executors or administrators is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed."

At this date it appears that Griswold confessed judgments to sundry persons for an aggregate sum, which, together with his indebtedness to the United States and sundry mortgage creditors, far exceeded the value of his assets, and that said judgments, with the exception of the one to the plaintiffs herein for \$348.82, were based upon fictitious claims and confessed with the intent to hinder, delay, and defraud the United States in the collection of a claim against Griswold, then in suit in this court, and upon which it obtained judgment against him, on July 30, 1879, for \$35,228, and \$2,821.60 costs and disbursements. Upon this state of facts it was tacitly admitted by counsel, and assumed by the court, on the hearing of the original case, that the priority of the United States attached to the property of Griswold, subject to the liens of the valid mortgages thereon. It is admitted that the statute giving the priority of payment was not applicable to this case, unless Griswold had made a voluntary assignment of his property; and it is also admitted that he had not done so, unless the confessing of these judgments amounted to such assignments.

\*See 18 FED. REP. 625.

There is no doubt but that the effect of these judgments by means of the lien they carried, when docketed, unless set aside at the suit of creditors for fraud, was practically to transfer whatever interest Griswold had in the property in question to the plaintiffs therein. But, upon further reflection and examination, I am satisfied that they did not amount to or operate as an assignment within the purview of the statute. The latter is only applicable to cases where the debtor's estate, either by his death, legal bankruptcy, or insolvency, has passed into the hands of an administrator or assignee for the benefit of his creditors, or where the debtor himself has voluntarily made such disposition of it. It does not apply, then, to a conveyance, assignment, or transfer, by whatever means accomplished, to a real or pretended creditor or creditors in payment or satisfaction of a debt or claim. There must be in some way an assignment of the debtor's property to a third person for distribution among his creditors before the statute can be invoked, and then it operates directly upon the assignee by requiring him to pay the claim of the United States first, and making him personally liable therefor if he does not. Section 3467, Rev. St. The following authorities bear, with more or less directness, upon these conclusions: *U. S. v. Fisher*, 2 Cranch, 390; *U. S. v. Hooe*, 3 Cranch, 90; *Conard v. Atlantic Ins. Co.* 1 Pet. 438; *Beaston v. Farmers' Bank of Delaware*, 12 Pet. 132; 1 Kent, Comm. 247; *U. S. v. Canal Bank*, 3 Story, 81; *U. S. v. McLellan*, 3 Sumn. 350; Conkl. Treat. 723.

It follows that so much of the decree as provides that lot 8, in block 10, and the W.  $\frac{1}{2}$  of lots 1, 2, 3, and 4, in block 73, in the town of Salem, shall be subject to the payment of the judgment of the United States, after they have been sold on legal process from the state court and before the entry of said judgment, upon the assumption that the priority of the United States had attached thereto prior to such sale, to-wit, on January 6, 1879, is erroneous and must be reversed, and a decree entered dismissing the bill as to the plaintiffs in error.

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GUINN v. IOWA CENT. RY. CO

(Circuit Court, S. D. Iowa. 1882.)

**CORPORATION—JURISDICTION.**

The "principal place of business" of a corporation is no test of residence, whether of a corporation or of a natural person, as a person may reside in one state and have his principal or sole place of business in another state.