

banks not organized under any law of the United States, which do or might do banking business where such national banking associations may be doing business when such suits may be begun; and all laws and parts of laws of the United States inconsistent with this proviso be and the same are hereby repealed."

But the actions before us do not come within the letter or the reason of this proviso. They are not suits brought by or against a national bank doing business in this state and district; but they are suits brought against private persons, after the bank has been found to be insolvent, and for the exclusive benefit of its creditors, by a receiver in whom its whole property has been vested by operation of law.

The only subject to which the proviso relates is the jurisdiction of suits brought by or against national banks; and its purpose is to leave such suits, "except suits between them and the United States, or its officers and agents," to the jurisdiction of the state courts, unless the domicile of the parties is such as to give the federal courts concurrent jurisdiction. No intention can be implied to oust the federal courts of jurisdiction of suits brought by an officer of the United States, under the authority of the laws of the United States, to recover of the stockholders of an insolvent national bank money which, when recovered, the plaintiff is required to pay over to the treasurer of the United States for the benefit of the creditors of the bank.

Motions to dismiss overruled.

MEAD, Ex'x v. PLATT, Assignee.

(Circuit Court, S. D. New York. August 2, 1883.)

BANKRUPTCY—APPEAL FROM DISTRICT COURT—NOTICE TO ASSIGNEE—REV ST. §§ 4980, 4981, 4984, 5081.

The failure to give notice of an appeal from the disallowance by the district court of a claim against an estate in bankruptcy to the assignee is fatal to it, and good ground for moving to dismiss it; for in such case the assignee is the "adverse party," in the sense of Rev. St. § 4981.

In Bankruptcy.

William W. Ladd, Jr., for plaintiff.

Coleridge A. Hart, for assignee.

WHEELER, J. This is an appeal by the plaintiff from the disallowance by the district court, held by Judge Brown, of her claim against the estate in bankruptcy of which the defendant is assignee. The claim was examined on application of Mary E. Travis, a creditor, and contested by her. Notice of the appeal was given to her within ten days from the entry of the decision, but not to the as-

signee. The assignee has moved to dismiss the appeal for this cause, among others; and the motion has been heard by consent of parties, which was required before hearing, although this case is not within the terms of the statute in relation to hearing appeals from a district court by a district judge. Rev. St. § 614.

The failure to give notice of the appeal to the adverse party, as required by section 4981, Rev. St., is fatal to it, and good ground for moving to dismiss it. *Wood v. Bailey*, 21 Wall. 640. Unless the moving creditor in the district court is the adverse party, within the meaning of section 4981, this appeal must, on the authority of that case, be dismissed. The provisions of that section must be read with the others on the same subject for a correct understanding of them. The preceding section allows appeals in equity, and writs of error at law, when the debt or damages claimed amount to more than \$500, and gives an appeal to "any supposed creditor whose claim is wholly or in part rejected, or an assignee who is dissatisfied with the allowance of a claim." This section requires the notice to be given "to the assignee or creditor, as the case may be." The assignee represents the estate, and is the adverse party to all claimants against the estate. He is the party who, by section 4984, must plead or answer to the declaration of the claimant, and against whom, by section 4985, costs are to be taxed as "the adverse party," if the claimant prevails. A creditor applying for and procuring the examination of a claim does no more than the court may do of its own notion, and does not become a party to that particular claim. Section 5081. Such creditor merely sets the machinery in motion to have the claim adjudicated by the court; the defense of the claim must always be in the name and behalf of the assignee. There are no provisions for making such moving creditor any otherwise a party. The words "assignee or creditor, as the case may be," must mean assignee when the creditor appeals, and creditor when the assignee appeals. When the creditor appeals, the assignee is the one who must plead and make defense, and the one who needs notice of the appeal to act upon. He is the adverse party, in the sense of section 4981.

Motion granted and appeal dismissed.

UNITED STATES *v.* SMITH.

(Circuit Court, D. Massachusetts. August 8, 1883.)

1. VERIFICATION OF SUMMARY COMPLAINT FOR OFFENSE ON HIGH SEAS—NOTARY PUBLIC.

In case of a summary complaint for an offense on the high seas the oath must be taken before the court or judge, or clerk of court, or some commissioner, who, in the absence of the judge, may be applied to for a warrant or summons; and