

taken under the provisions of the Code of Iowa in the manner and under the circumstances in which they have been taken in this court.

The question presented by the motion to suppress is whether, in law actions pending in the courts of the United States in the districts of Iowa, either party may take depositions under the provisions of the Code of Iowa. It is claimed that the right so to do is conferred by the provisions of section 914 of the Revised Statutes, which enacts that "the practice, pleadings, forms, and modes of proceeding in civil causes, other than equity and admiralty causes, in the circuit and district courts, shall conform as near as may be to the practice, pleadings, and forms and modes of proceeding existing at the time in like causes in the courts of record of the state within which such circuit or district courts are held, any rule of the court to the contrary notwithstanding." The meaning of this section is that the practice and proceedings in civil cases in the federal courts shall conform, as near as may be, to the practice and proceedings in like cases in the state courts, in all matters wherein express provision is not made by the laws of the United States. "When the latter speak, they are controlling; that is to say, on all subjects on which it is competent for them to speak." *Connecticut Life Ins. Co. v. Shaefer*, 94 U. S. 457.

By section 861 of the Revised Statutes it is declared that "the mode of proof in the trial of actions at common law shall be by oral testimony and examination of witnesses in open court, except as hereinafter provided." Sections 863-866 and 867 provide for taking depositions *de bene esse*, *in perpetuam*, and to prevent a failure of justice. It does not appear that any of the causes embraced within these sections for taking depositions exist in the present case, and it would seem clear, therefore, that the plaintiff must, under section 861, produce the witnesses in open court. The declaration in this section is explicit that the mode of proof in common-law actions is by oral examination in open court, except as otherwise provided in the statutes of the United States. In determining, therefore, whether the right exists to take testimony by depositions in common-law causes pending in the federal courts, reference must be had to the statutes of the United States. When, however, the facts are such in a given case that, under the provisions of the statutes of the United States, the right to take the testimony of witnesses by depositions exists, then, as to the mere mode of procuring the deposition, parties may follow at their election either the provisions of the state law or of the act of congress. See case of *Flint v. Board Com'rs*, 5 Dill. 481. The right existing, therefore, in a given case to procure testimony by deposition, under the provisions of the statutes of the United States, the same may be taken upon written interrogatories duly served according to the requirements of the state statutes, and in the mode therein provided for, as well as in the manner provided for in the acts of congress. As it does not appear, however, in the present

case that the right to take the testimony of the witnesses by deposition existed under the provisions of the laws of the United States, the motion to suppress the depositions must be granted; and it is so ordered.

BREWER and LOVE, JJ., concur.

In re CLEVELAND INS. Co., Bankrupt.¹

BURKE and another *v.* GLOBE INS. Co.¹

(Circuit Court, N. D. Ohio. 1884.)

1. BANKRUPTCY—RES ADJUDICATA—DECREE OF BANKRUPTCY.

The finding, in a decree of adjudication in involuntary bankruptcy, that the petitioning creditor has a valid, provable claim to the amount of \$250, is not conclusive upon the assignee and creditors, so as to dispense with proof of debt of the petitioning creditor, or to preclude questioning the right of such claim to participate in the distribution of the estate.

2. SAME—SET-OFF.

Set-off arises only between independent debts, mutually due, between the same parties.

3. SAME—COUNTER-CLAIM—REINSURANCE—OTHER LOSSES.

The C. Co. reinsured certain risks with the G. Co., (both Ohio corporations,) and losses occurred upon such risks. The former made an assignment under the state law, and, upon petition of the latter, was subsequently adjudicated a bankrupt. Between the date of the assignment and the filing of the petition in bankruptcy, the G. Co. purchased claims against the C. Co., for losses,—part being covered by the G. Co.'s reinsurance, and part being for other risks,—for the purpose of using such claims as offsets to its own liability. *Held*, that the claims so purchased for losses, which the G. Co. had reinsured, were a valid counter-claim against its indemnity of reinsurance upon such claims, and that this is not affected by the twentieth section of the bankrupt act, nor the amendment of 1874, nor by the principle of *Straw v. Ins. Co.* 5 Ohio St. 59. But, under the decisions of the supreme court of Ohio, claims for losses which the G. Co. had not reinsured, it could not set off against claims arising on other reinsurance; it is a debtor to the bankrupt's estate to the amount of such latter claims. The former class of claims, though, is provable in its favor as a general creditor.

Appeal in Bankruptcy from District Court.

S. Burke, for Younglove.

J. D. Cox, for Globe Ins. Co.

MATTHEWS, Justice. This is a proceeding to review and reverse a decree of the district court, sitting in bankruptcy, sustaining the exceptions of the Globe Insurance Company to a report of the register in reference to its claim as a creditor. The claim, as stated and finally allowed by the decree, is as follows:

Total claim,	-	-	-	-	-	-	-	-	\$50,134 48
Credits admitted,	-	-	-	-	-	-	-	-	47,353 77
Balance found,	-	-	-	-	-	-	-	-	\$ 2,780 71

¹ Reported by J. C. Harper, Esq., of the Cincinnati bar.