

ing of the section, provided the parties thereto are citizens of different states. The real point for decision, therefore, under the rule laid down in the authorities above cited, is whether Frank L. Hodgins is a necessary or indispensable party to the controversy touching the priority of the mortgages. If he is, then, as he is a citizen of the same state with complainant, the case cannot be removed. If he is not, then the cause is removable, because it there appears that the case is capable of separation into parts, one of which presents a controversy between citizens of different states. Frank L. Hodgins is the grantor in both mortgages. By his own act he has subjected the property to the payment of both mortgages, and legally he stands indifferent as to the question of which shall be first satisfied. The question of priority between the mortgages is a distinct issue between them to the determination of which the mortgagor is not an indispensable party. Thus, when Adaline Hodgins took possession of the goods, claiming the right so to do under her mortgage, the complainant might have replevied the same or sued for the value of his interest therein, and it would have been wholly unnecessary to have made the mortgagor a party to these actions. As the controversy, therefore, between the mortgagees might have been made the subject of a distinct action between them, to which the mortgagor need not have been made a party, it follows that in the present suit there is involved a controversy between the mortgagees which can be fully determined as between them, without the presence of the mortgagor, and therefore the case is brought within the terms of the section in question, and the cause was properly removed to this court.

Motion to remand must therefore be overruled.

BROOKS v. VERMONT CENT. R. CO. and another.

(Circuit Court, D. Vermont. October 31, 1884.)

JURISDICTION OF CIRCUIT COURT—FORECLOSURE OF RAILROAD MORTGAGE AND APPOINTMENT OF RECEIVER IN STATE COURT—ACTION BY BONDHOLDER FOR ACCOUNTING.

The Consolidated Railroad Company of Vermont was formed by the organization of the bondholders of the Vermont Central Railroad Company after the foreclosure of the mortgage on the road, and the appointment of a receiver in a proceeding in the state court of Vermont. The holder of a large amount of the bonds, which were not surrendered into the reorganization, filed a bill in the circuit court of the United States to compel the Consolidated Railroad Company to account with him for the railroad property, to which the company pleaded that the road was in the hands of a receiver appointed by and accountable to the chancery court of the state having jurisdiction. *Held*, on demurrer, that the plea was not sufficient.

In Equity.

Francis A. Brooks, for orator.

Benjn. F. Fifield, for defendants.

WHEELER, J. The bill shows, in substance, that the defendant the Vermont Central Railroad Company was the mortgagor of the Vermont Central Railroad; that the mortgage was foreclosed; that the defendant the Consolidated Railroad Company of Vermont was formed by the organization of the bondholders after the foreclosure; that the orator is the holder of a large amount of the bonds which were not surrendered into the reorganization; and that the defendant the Consolidated Railroad Company refuses to account with him for the railroad property. The prayer of the bill is for such account. The Vermont Central Railroad Company has demurred to the bill. The Consolidated Railroad Company has pleaded that the road and property are in the hands of a receiver appointed by and accountable to the court of chancery of the state having jurisdiction. The demurrer and plea have been argued. The rights of the mortgagor were all extinguished by the foreclosure. This was the very object of that proceeding. No further relief in respect to the mortgaged property could be had against that corporation. It had no interest there to defend or protect, or which could be attacked or reached. The bill is brought expressly to reach and adjust rights which accrued upon the foreclosure. The mortgagor is wholly indifferent as to their adjudication as attempted, and not a necessary or proper party thereto. Its demurrer is therefore sustained.

Under the statutes of the state upon which the bill is founded, the orator has the rights of a tenant in common with the corporation formed of the other bondholders, to the estate and property acquired by the foreclosure, subject to the right of that corporation, as between them, to the possession, and to receive the income for itself and as trustee for such co-tenants. Rev. Laws Vt. § 3471. The bill is brought to reach the share of the income which the corporation may so have received for the orator, and not at all to reach or touch the possession of the property itself. No decree which is sought or can be passed would interfere in any way with the jurisdiction of the state court or possession of its receiver. The bill is framed to proceed entirely outside of those. It seeks an account of any income received, without regard to the method of its receipt, from the mortgaged property; and a decree, if had, would be a mere money decree, like a personal judgment against the corporation. The receivership does not appear to stand at all in the way of such a proceeding. The plea of the receivership merely does not show, therefore, good cause for not answering the bill. Income may have been derived from the receiver itself, and if so, its source would be no excuse for not dividing it with any to whom a share of it may belong. A plea wholly denying anything to be accountable for might be good. This plea has been carefully scrutinized to ascertain whether it amounts to that; and it does not appear to. The plea may be true in point of fact, and still

something have been received of which the orator may be entitled to a share. Therefore, the plea does not appear to be sufficient.

Demurrer of Vermont Central Railroad Company sustained. Plea of Consolidated Railroad Company overruled; that defendant to answer over by December rule-day.

SLOANE and others v. CHINIQUY and another.

(Circuit Court, D. Minnesota. July 2, 1884.)

1. CONSTITUTIONAL LAW—INSOLVENT LAW OF MINNESOTA.

It is a well-recognized principle that, among other things, a state, if it does not thereby impair the obligation of a contract, may provide for the distribution of the property of a debtor within the limits of the state.

2. SAME—IMPAIRMENT OF THE OBLIGATION OF CONTRACTS.

The act of March 7, 1881, (Minn. St.,) providing for the dissolving of attachment *ipso facto* by the debtor's assignment of his property, is not an act impairing the obligation of contracts.

3. SAME—SCOPE OF THE LAW—RIGHTS OF CREDITOR—FEDERAL COURTS.

The act of March 7, 1881, (Minn. St.,) does not discharge a debt unless the party discharges himself by releasing the debtor. As long as the plaintiff in the case chooses to stay out and say, "I will not release," he has a right to take a judgment which may at some time be effectual against the defendant. In such a case there is no doubt that the United States courts have power to render a judgment.

4. SAME—CONTRACT SUBSEQUENT TO ENACTMENT.

In a case where the contract was entered into subsequently to the enactment of the law, it cannot be held that such law impairs the obligation of the contract.

In Equity.

O'Brien & Wilson, for complainants.

E. G. Rogers, for defendants.

MILLER, Justice. The case of Sloane against Chiniquy was originally an attachment against Chiniquy, levied on his property by an order from this court. It seems that the defendant availed himself of the statute of Minnesota, which enacts that in such a case the debtor in attachment may make an assignment of all his effects, subject to execution, for the benefit of all his creditors who will execute and file releases of their claims against him, and that the assignment shall be filed in the district court of the state, and that the parties shall proceed about as in bankruptcy proceedings, dividing the property among those who should prove their debts, and release him from further liability. The bill in the present case is filed against the assignee by the original plaintiff in this court, to restrain any further proceedings under that assignment, and to declare the assignment void. The main argument in favor of declaring it void is that the statute itself is void; that the act of the legislature of the state of