## SOWLES v. FIRST NAT. BANK OF ST. ALBANS.

(*Circuit Court, D. Vermont.* May 27, 1891.)

REMOVAL OF CAUSES—AGAINST NATIONAL BANK—RECEIVERSHIP.

A suit against a national bank to reach property held as a part of its assets by its receiver, appointed by the comptroller of the currency, arises under the laws of the United States, and may be removed from the state court into the federal court.

In Equity. On motion to remand.

*Edward A. Sowles, in pro. per.*

*Chester W. Witters*, for defendant.

WHEELER, J. This suit was brought in a court of chancery of the state against the bank to reach property held as a part of the assets of the bank by the receiver appointed by the comptroller of the currency. The subpœna ran to the bank, and did not name the receiver, but was served upon him, and a temporary injunction was granted which would reach him. He removed the cause into this court. The orator has moved to remand it to the state court, and that motion has now been heard. The orator insists that the suit is against the bank, and not against the receiver; and relies upon *Whittemore* v. *Bank*, 134 U. S. 527, 10 Sup. Ct. Rep. 592, to show that this court has no jurisdiction. In that case the bank was not in the hands of a receiver, but was *sui juris*. This bank is altogether in the hands of the receiver, and the decree sought, if it would reach anything, would reach assets of the bank in his hands. Although the bank, as an organization, is not extinguished, but is continued in existence for the purposes of being wound up, it has no control, as a bank, of any of its property interests, and cannot, apart from the receiver, be affected by a decree to reach them. The receiver is the real party in this behalf. He is an agent of the United States, and an officer thereof for this purpose. *Kennedy* v. *Gibson*, 8 Wall. 498. The assets in his hands belong to the United States for distribution among those entitled to them. *Hitz* v. *Jenks*, 123 U. S. 297, 8 Sup. Ct. Rep. 143. The jurisdiction of this court is not affected by the provisions of section 4 of the act of August 13, 1888, relating to suits for and against national banks, but is saved by them. 25 St. 436. The suit arises from the proceedings of the receiver, and under the laws of the United States, and appears to be removable. Motion denied.

## UNITED STATES BANK *v.* LYON COUNTY *et al.*

(*Circuit Court, N. D. Iowa, W. D.* June 15, 1891.)

RESCISSION OF CONTRACT—EQUITY JURISDICTION—REMEDY AT LAW.

In a suit against a county and its agent the bill alleged that said agent induced complainant to buy bonds of the county by the false representations that they were issued to refund indebtedness, all of which had been in judgment against the county; that whether any of the bonds represented indebtedness which was enforceable against the county could be determined only by an investigation of the county's financial history for many years past; that when said bonds were issued, the legal limit of indebtedness had already been exceeded; that the county denied the validity of the bonds. The prayer was for a rescission of the contract of sale, the bonds being tendered back, and for a judgment for the amount paid. *Held*, that the bill failed to show a case within equitable jurisdiction, as an action for money had and received would accomplish all that was sought save the rescission, which was unnecessary.

In Equity. Demurrer to amended bill.

*Henderson, Hurd, Daniels & Kiesel*, for complainant.

*Van Wagenen & McMillian, Kauffman & Guernsey*, and *E. C. Roach*, for defendants.

SHIRAS, J. The facts averred in the amended bill herein filed are in brief as follows: That during the period from April, 1884, to September, 1885, inclusive, the county of Lyon, in the state of Iowa, under the provisions of the several statutes of Iowa then in force, ordered the issuance of the bonds of the county, and, in pursuance thereof, there was issued a series of bonds, 120 in number, for the sum of $1,000 each, with interest coupons attached; that in September, 1885, the defendant Richards, then being the agent of the county, duly authorized, requested the complainant to purchase five of said bonds, being those numbered 091 to 095 inclusive; that the value of the taxable property of said county at that time, as shown by the state and county tax-lists for the year 1884, did not exceed the sum of $1,580,735; that, in order to induce complainant to purchase said bonds, the said Richards, as agent of said county, represented that the said series of 120 bonds had been issued to refund indebtedness of the county evidenced by bonds previously issued, the validity of which indebtedness had been established by judgments against said county; that, relying upon these representations, complainant purchased said five bonds, paying therefor the sum of $5,100, which money was received and used by the said county; that the representations thus made are false, it not being true that said 120 bonds were issued to refund indebtedness, all of which had been in judgment against said county, but only a portion thereof had been evidenced by judgment; that the said Richards and the said county well knew at the time that said representations so made were untrue; that after the year 1887 the county ceased to pay interest on said bonds, and now refuses to recognize said bonds as being valid obligations of the county, and now avers that the same were not issued to refund a previously existing valid indebtedness, which had been evidenced in whole by judgments against said county; that from the investigation made by complainant it now ap-