GRANT v. SPOKANE NAT. BANK et al.

(*Circuit Court, D. Washington, E. D.* September 5, 1891.)

1. NATIONAL BANKS—RECEIVERS—ACTIONS AGAINST—PARTIES.
   In an action to secure the application of part of the funds in the hands of a receiver of a national bank, appointed by the comptroller of the currency, in satisfaction of plaintiff's claim against the insolvent bank for money received by it as collecting agent, the bank is only a nominal party, for the receiver is the one to be held accountable for any unauthorized disposition of the money sued for.
2. SAME—JURISDICTION OF FEDERAL COURTS.
   Since the object of the suit is to control the official conduct of the receiver, appointed under the authority of the national banking laws, and his defense must rest on the interpretation of those laws, the case is within the jurisdiction of the federal circuit court, as being one "arising under the * * * laws of the United States."

In Equity. Motion to remand to state court.

J. C. McKinstry, for plaintiff.

P. H. Winston and *H. M. Herman*, for defendants.

HANFORD, J. The object of this suit is to control the official conduct of the receiver of a national bank appointed by a comptroller of the currency, and acting under authority of the national banking laws, in so far as to secure a particular application of a portion of the funds in his official custody in satisfaction of a claim of the plaintiff against the insolvent bank for money received by it as a collecting agent. I hold that the bank is only a nominal party. The receiver must defend, as he is the one who will be held accountable for any unlawful or unauthorized application or disposition of the money which the plaintiff is endeavoring to secure; and his defense must rest upon a just interpretation of the laws of the United States, for, as he holds his office under national authority, his conduct must be regulated by the national laws. From the premises, and upon principles supported by the highest authority, the conclusion necessarily follows that the suit is one of which a circuit court of the United States is invested with jurisdiction by the clause of the act giving jurisdiction of suits of a civil nature "arising under the * * * laws of the United States." *Armstrong* v. *Ettlesohn*, 36 Fed. Rep. 209; *Armstrong* v. *Trautman*, Id. 275; *McConville* v. *Gilmour*, Id. 277; *Sowles* v. *Witters*, 43 Fed. Rep. 700; *Tennessee* v. *Davis*, 100 U. S. 257–264; *Railroad Co.* v. *Mississippi*, 102 U. S. 135–141; *Feibelman* v. *Packard*, 109 U. S. 421–423, 3 Sup. Ct. Rep. 289; *Removal Cases*, 115 U. S. 11, 5 Sup. Ct. Rep. 1113; *Bachrack* v. *Norton*, 132 U. S. 337, 10 Sup. Ct. Rep. 106; *Reagan* v. *Aiken*, 138 U. S. 109, 11 Sup. Ct. Rep. 283; *Bock* v. *Perkins*, 139 U. S. 630, 11 Sup. Ct. Rep. 677. It is my opinion, therefore, that this case was lawfully removed to this court from the superior court of Spokane county, in which it was commenced, and the plaintiff's motion to remand will be denied.

CHASE *v.* CANNON *et al.*

(*Circuit Court, D. Washington, E. D.* September 22, 1891.)

1. NATIONAL BANKS—INSOLVENCY—RECOVERY OF ASSETS—JURISDICTION.
   A national bank pledged negotiable notes to another bank to secure a loan, and then, a small balance remaining unpaid, became insolvent. Certain of its creditors, before the appointment of a receiver, obtained judgments in the state court, issued executions thereon, and attempted to secure liens on the pledged notes by garnishing the pledgee, but the officer failed to obtain possession of the notes, or to collect the money due thereon. The pledgee refused to surrender the notes to the receiver, and endeavored to collect them, whereupon the receiver sued to recover them. *Held*, that his suit was properly brought in equity, as the claims affecting the subject-matter and the questions to be determined thereon are numerous and complicated, and would otherwise give rise to a multiplicity of suits.
2. SAME—EQUITY—PLEADING—MULTIFARIOUSNESS.
   All of such judgment creditors are proper parties to the bill, which is, hence, not multifarious in that regard, though each asserts a separate claim based upon a distinct judgment, for each claims a lien on the whole subject-matter; and the controversy is single,—to determine whether plaintiff is entitled to possession of the property, and what interest defendants, or either of them, may have therein.
3. EXECUTION—LEVY—CUSTODIO LEGIS—COURTS—CONFLICT OF JURISDICTION.
   In the state of Washington, personal property capable of manual delivery can only be levied on by the officer taking actual possession of it; and such property of a judgment debtor in the hands of a garnishee is not *in custodio legis* by virtue of writs of execution issued by a court of the state. Hence, there can be no conflict of jurisdiction by reason of a suit in equity to determine the rights of all parties asserting claims to such property, commenced in a federal court after the return-day of such writs.

In Equity. On demurrer to bill.

P. H. Winston, for plaintiff.

H. M. Herman and *Turner & Graves*, for defendants.

HANFORD, J. The defendant the Citizens' National Bank is in possession of negotiable promissory notes of the aggregate value of about $30,000, which notes are the property of an insolvent national bank. The complainant is, by an appointment of the comptroller of the currency, receiver of said insolvent bank. The notes mentioned were, before the insolvency of the bank became known, delivered in pledge to secure a loan of $20,000, of which amount there is still unpaid a balance of about $9,000. The notes were intrusted by the pledgee thereof to the Citizens' National Bank for collection. The other defendants are each creditors of the insolvent bank. After its doors were closed, and before the receiver was appointed, they obtained judgments against it in the local courts of this state; issued executions thereon, and attempted to acquire liens upon said notes by serving notices of garnishment upon the Citizens' National Bank. And now, although the officer to whom the writs were issued failed to obtain possession of the notes, or to collect any part of the debts owing to the insolvent bank evidenced by said notes, during the life-time of the writs, and the time limited by the laws of the state for the return of said writs has long since expired, they claim to have liens on said notes by virtue of the service of such garnishee process. The Citizens' National Bank has refused to surrender the notes to the receiver, and is endeavoring to collect the same. All of the defendants