

**FARMERS' & MERCHANTS' STATE BANK *et al.* v. ARMSTRONG.**

(Circuit Court of Appeals, Sixth Circuit. October 6, 1891.)

**1. CIRCUIT COURT OF APPEALS—CERTIFYING CAUSE TO SUPREME COURT.**

Where a pending appeal in the supreme court and a cause before the circuit court of appeals can, by reason of their connection, be heard together, and the district and perhaps the circuit judges are, under Act Cong. March 3, 1891, disqualified to pass on the case from having heard the same or similar questions in the court below, it is a proper exercise of discretion to certify the questions involved to the supreme court, under section 6 of that act.

**2. SAME—RECORD.**

Under Act Cong. March 3, 1891, § 6, providing for the certification of questions by the circuit court of appeals to the supreme court for instructions, the matter of sending up the whole record is left with the supreme court.

Motion to Certify the Case to the Supreme Court of the United States.  
Granted.

*William Worthington*, for motion.

*John W. Herron*, opposing.

Before BROWN, Circuit Justice, JACKSON, Circuit Judge, and SAGE, District Judge.

BROWN, Circuit Justice, (*orally.*) In this case a motion was made to certify the case to the supreme court of the United States. The sixth section of the act establishing the circuit court of appeals provided:

"The circuit court of appeals may, at any time, certify to the supreme court of the United States any questions or propositions of law concerning which it desires the instruction of that court for its proper decision."

We think that, in view of the fact that the district judge who is assigned to hold this term of the court of appeals is disqualified to pass upon the questions involved in this case by reason of having heard them in the court below, and that the circuit judge also is perhaps disqualified under the terms of the act, by reason of having decided a similar question in another case, and in view of the further fact that there is a case already pending on appeal, in the supreme court of the United States, which is incidentally connected with this case, and that these may probably be argued together, we think the questions arising in this case should be certified to the supreme court.

The law provides that, in case there are questions or propositions of law concerning which this court desires instructions, the court may certify the case; and that, upon such certifying being made, the court "may either give its instructions on the questions and propositions certified to it, which shall be binding upon the circuit court of appeals in such case, or it may require that the whole record and cause may be sent up to it for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal." That would seem to leave the matter of sending up the whole record to the supreme court.

WEBB *et ux.* v. HAYNER *et al.*

(District Court, W. D. Texas. March 12, 1892.)

## 1. HOMESTEAD—WHAT CONSTITUTES—BUSINESS PREMISES.

Under Const. Tex. art. 16, § 51, an urban homestead may include not only a house and lot used as a family residence, but also other lots contiguous thereto, which are used by the head of the family for business purposes, provided that both together do not exceed \$5,000 in value, exclusive of improvements. *Miller v. Menke*, 56 Tex. 550, followed.

## 2. SAME—EXEMPTION.

Under sections 50, 51, such homestead is exempt from judicial sale to pay debts incurred in the purchase of merchandise.

## 3. SAME—DESIGNATION—PLEADING.

Under the Texas constitution, a designation of business premises as a homestead is sufficiently shown by a bill which alleges that plaintiff "purchased said property for the purpose of using the same as a place to carry on his said business, and with the fixed intention of designating and using the same as his business homestead," and that on the day he acquired title he took possession, and has since continuously used the premises as his place of business. *Miller v. Menke*, 56 Tex. 550, followed.

## 4. SAME—SALE OF HOMESTEAD—INJUNCTION.

Equity will enjoin the forced sale of a homestead to pay debts, since such sale, though invalid, would create a cloud upon the title.

In Equity. Suit by Joseph W. Webb and wife against Hayner & Co. and Paul Fricke to enjoin the sale of a homestead. Heard on demurrer to the bill. Overruled.

*George F. Pendexter*, for complainants.

*James B. Goff*, for defendants.

Before MAXEY, District Judge.

MAXEY, District Judge. This bill of injunction is brought to restrain Hayner & Co. and Paul Fricke, marshal of this district, from selling a house and lot claimed by complainants as a business homestead. Defendants demur on several grounds, but at the argument only the following were relied upon: (1) "That said bill discloses no equity, and sets forth no facts which, if true, would entitle the plaintiffs to the relief sought." (2) "That it appears from the averments in said bill contained that, if the same are true, plaintiffs have a full and adequate remedy at law." (3) "That said bill sets forth no facts constituting a designation of the land therein described as a homestead." It is alleged in the bill that the husband, Joseph W. Webb, has during the past 10 years been a married man, and the head of a family, a citizen of Travis county, and continuously during the period aforesaid has been engaged in the mercantile business as a member of the firm of John A. Webb & Bro. The bill then proceeds as follows:

"Your orator would further show that heretofore, to-wit, on November 9, 1881, he acquired by purchase a legal and equitable title to certain real estate in the city of Austin, Travis county, Texas, fully described as follows, to-wit: Ten feet off of the east side of lot No. three, and twenty-nine and a half feet off of the west side of lot No. four. Said lots adjoin each other, and are situated in block No. 68, in said city of Austin; together with the improvements thereon situated, consisting of a two-story brick store-house. *Third.* Your orator would further show that he purchased said property for