Mr. Freeman says:

"The sale of homestead property under execution has frequently been enjoined. The injunction, in such cases, has uniformly been justified upon the ground that the sale, if permitted to be made, would create a cloud on the defendant's title." Freem. Ex'ns, § 439.

In Thompson on Homesteads and Exemptions, (section 681,) it is said by the author that—

"One of the grounds on which courts of equity frequently interfere for the protection of the debtor's homestead is cloud upon title. Thus, where a house constituting a part of a debtor's homestead has been sold under an execution against him, although the sale confers no title, yet it constitutes such a cloud upon the debtor's title that equity will interfere to enjoin possession. So, in order to prevent a cloud being cast upon his title, a court of equity will enjoin a threatened sale of a debtor's homestead."

See, also, 10 Amer. & Eng. Enc. Law, p. 809, tit. "Injunctions." Reference also to the following cases will conclusively show that injunction is the proper remedy to prevent the threatened sale of a homestead under circumstances disclosed by the bill in this suit. *Gardner* v. *Douglass*, *supra*; *Van Ratcliff* v. *Call*, 72 Tex. 491, 10 S. W. Rep. 578; *Fink* v. *O'Neil*, 106 U. S. 272, 1 Sup. Ct. Rep. 325.

Defendants rely, in support of their position, upon *Whitman* v. *Willis*, 51 Tex. 421; *Carlin* v. *Hudson*, 12 Tex. 202; and *Cameron* v. *White*, 3 Tex. 152. It is apparent from an examination of those authorities that they are without application to the facts as set forth in the bill of complaint. There no homestead question was involved. Here the only purpose of the bill is to restrain the sale of homestead property, which is securely protected from forced sale by the constitution and laws of the state. The demurrer to the bill should be overruled; and it is so ordered.

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

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

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

George F. Pendexter, for complainants.

James B. Goff, for defendants.

MAXEY, District Judge. The bill in this suit is in all respects similar to that in case No. 182, (49 Fed. Rep. 601,) except that in the present bill it appears that the execution was levied by the marshal upon different, but adjoining, property; and the complainants in this suit have no homestead other than that described in the bill, which is used solely for business purposes. The demurrer of defendants raises the same grounds of objection as those already considered, and a like ruling must follow. It is therefore ordered that the demurrer be overruled.

FRANKLIN COUNTY NAT. BANK *v.* BEAL, Receiver.

(*Circuit Court, D. Massachusetts.* March 11, 1892.)

BANKS AND BANKING—COLLECTIONS—COURSE OF DEALING—INSOLVENCY.

Plaintiff and defendant banks for several years had acted as agents for each other in the collection of checks, notes, and drafts, the practice being for each to credit the other for checks when received, and for drafts and notes when advised of their payment. When a check was returned unpaid after being credited, the amount thereof was charged back again. The amounts thus collected were mingled with the general funds of the bank. Plaintiff sent defendant a note for "collection and credit," which, on maturity, was paid by a check, and credit was immediately given on the books. But defendant failed, and the check passed into the hands of the receiver. *Held* that, in view of the course of dealing, the two banks stood in the relation of debtor and creditor with respect to the amount of the check, and it became a part of the assets of the bank.

In Equity. Suit by the Franklin County National Bank against Thomas P. Beal, receiver of the Maverick National Bank, to recover possession of a certain check or its proceeds. Heard on demurrer to the bill. Sustained.

Causten Browne, for complainant.

Hutchins & Wheeler and *Frank D. Allen*, U. S. Atty., for defendant.

COLT, Circuit Judge. This case was heard upon demurrer to the bill of complaint. The defendant is the receiver of the Maverick National Bank, which closed its doors for business, October 31, 1891. For several years prior to this date the Maverick Bank had been the agent of the complainant to collect checks on other banks, and drafts and individual notes of other parties. Under this course of dealing, the Maverick Bank received such checks, drafts, and notes, crediting the checks to the complainant when received, and crediting the drafts and notes when it was advised of their payment; and upon such credits it allowed the complainant a certain rate of interest, but whenever a check received by the Maverick Bank, and credited to the complainant, was returned unpaid, the amount so credited was charged back to the complainant. The complainant was also agent of the Maverick Bank to collect checks, drafts, and notes payable in Greenfield, Mass., where the complainant was located, and the amounts of such checks were credited to the Maverick Bank on receipt, and the amounts of such drafts and notes upon the advice of payment. The amounts collected were not kept separate by either bank, but the money was mingled with the general funds. On the 28th of September, 1891, the complainant mailed to the Maverick Bank a letter inclosing various checks and notes. The letter stated that they were inclosed for "collection and credit." Among these inclosures was a note for $10,000, drawn by Brown, Durrell & Co., of Boston, payable to their own order, indorsed by them and also by J. A. Brown. The note fell due October 31, 1891, and Brown, Durrell & Co. delivered to the said Maverick Bank, before it suspended, their check, drawn on the North National Bank, for $10,000, in payment of the note. This check was also indorsed by Brown, Durrell & Co. and J. A. Brown. Upon the re-