

WARDENS, ETC., ST. LUKE'S CHURCH v. SOWLES *et al.*

(Circuit Court, D. Vermont. August 22, 1892.)

FEDERAL COURTS—JURISDICTION.

A suit in a federal court against an executor, to recover a legacy, wherein a receiver of a national bank which held assets of the estate is party defendant, will be dismissed, on demurrer, as to the executor for want of jurisdiction, when all the parties are citizens of the same state.

In Equity.

H. Charles Royce, for plaintiffs.

Edward A. Sowles, *pro se*.

WHEELER, District Judge. The defendant Edward A. Sowles was executor of the will of Susan Bellows, and trustee under the will of \$5,000 for St. Luke's Church, without bonds. He rendered an account as executor, March 30, 1881, to the probate court having jurisdiction, in which he represented that he had paid all debts and expenses, and had in his hands more than sufficient assets to pay all specific and general legacies. Thereupon the several legacies were decreed to be paid by him, and among them this one to himself, "in trust for St. Luke's Church, in St. Albans, \$5,000," and the residue of the estate was decreed to the residuary legatee. Some of the assets of the estate came from the executor to the First National Bank of St. Albans, of which the defendant Witters is receiver. This bill is brought, alleging that this legacy has not been paid, nor provided for, to reach these assets in satisfaction of it. The bill is demurred to by the defendant Sowles, and the demurrer has been heard.

The parties to this suit are all citizens of Vermont; therefore this court has jurisdiction of only so much of it as arises under the laws of the United States. 25 St. at Large, p. 434, § 1. The receiver of the national bank holds what assets he has by virtue of those laws, and the suit, so far as it is against him, arises upon them. *Sowles v. Witters*, 46 Fed. Rep. 497; *Sowles v. Bank*, Id. 513. But the suit, so far as it is brought against the defendant Sowles, proceeds upon his liability as executor and trustee, and arises wholly upon the laws of the state. *Bellows v. Sowles*, 57 Vt. 411; *Weeks v. Sowles*, 58 Vt. 696, 6 Atl. Rep. 603; *Foss v. Sowles*, 62 Vt. 221, 19 Atl. Rep. 984. The laws of the United States afford the plaintiffs no right, and him no defense, and nothing between these parties can arise upon them. The demurrer of defendant Sowles is sustained, and let the bill be dismissed as to him, without costs, for want of jurisdiction.

SOCIETE ANONYME DU FILTRE CHAMBERLAND SYSTEME PASTEUR *et al.*
v. BLOUNT *et al.*

(Circuit Court, S. D. Ohio, W. D. August 13, 1892.)

No. 4,541.

APPEAL—SUPERSEDEAS—ORDER GRANTING INJUNCTION.

Upon an appeal, under Act March 3, 1891, § 7, from an interlocutory order granting an injunction, appellant is entitled to a *supersedeas*, as a matter of right, upon furnishing such a bond as the court in its discretion may require for the protection of the appellee.

In Equity. Pending on motion of the complainant to vacate and set aside the *supersedeas* heretofore allowed the defendant Blount on the appeal from the order granting complainant an injunction. Motion denied.

Paul A. Staley, for complainant.

H. A. Toulmin, for respondent.

JACKSON, Circuit Judge. The motion to vacate and set aside the *supersedeas* heretofore allowed the defendant Blount is denied. Under the seventh section of the act of March 3, 1891, said defendant had the right to appeal from the order of the circuit court granting the injunction, and, to make such appeal effectual, he had a right to the *supersedeas* upon such terms as the court or judge granting it might impose. In the prosecution of an appeal under that section, there is no discretion in the court or judge allowing the same to deny or refuse the appellant a *supersedeas*. There is a discretion in respect to the bond that may be required of the appellant for the protection and indemnity of the appellees. Any other construction of said section would defeat the very aim and purpose of its enactment,—the previous practice and legislation in relation to appeals, and their effect, render it very clear that the appeal allowed by said section was intended to suspend and vacate the order granting the injunction. The motion to vacate and set aside the *supersedeas* is denied.