of other claimants who are thus embraced, from asserting by bill or petition his right to share in the fund is established by numerous authorities both in England and the United States."

The court reaffirmed the doctrine laid down in the case of Williams v. Gibbes, 17 How. 239, where the court said:

"Now, the principal is well settled in respect to these proceedings in chancery for the distribution of a common fund among the several parties interested, either on the application of the trustee of the fund, the executor or administrator, legatee, or next of kin, or on the application of any party in interest, that an absent party, who had no notice of the proceedings, and not guilty of willful laches or unreasonable neglect, will not be concluded by the decree of distribution from the assertion of his right by bill or petition against the trustee, executor, or administrator; or, in case they have distributed the fund in pursuance of an order of the court, against the distributees."

And, after citing various cases, the court added:

"The cases above referred to relate to the rights of creditors and next of kin, but the principle is equally applicable to all parties interested in a common fund brought into a court of equity for distribution amongst the several claimants."

Johnson v. Waters, 111 U. S. 640, 4 Sup. Ct. Rep. 619; Flash v. Wilkerson, 22 Fed. Rep. 689; 2 Daniell, Ch. Pr. (4th Ed.) 1204.

These authorities are conclusive of this case. The rule established by the cases cited by counsel for the appellees—that when a judgment creditor who is in a position to assail conveyances made by his debtor in fraud of his creditors files a bill for that purpose, he thereby acquires a lien on the property which entitles him to priority over other creditors—has no application to this case. Kimberling v. Hartly, 1 McCrary, 136, 1 Fed. Rep. 571. In the case at bar the conveyance was not fraudulent. The assignment was a valid instrument, and was made for the equal benefit of all the creditors of Smith & French, and every creditor has a right to participate in the distribution of the fund in proportion to the amount of his debt upon contributing his proportion of the expense of establishing and enforcing the trust. The attorneys' fees for prosecuting the suit were, upon the petition of the complainants themselves, ordered paid out of the trust fund, which could only have been done on the theory that the suit was prosecuted for the equal benefit of all the creditors interested in the fund. Creditors are not required to obtain a judgment at law against Smith & French before filing their interventions. They may file their claims in the master's office, and when allowed they will be entitled to share pro rata with the appellees and all other creditors in the distribution of the fund.

In view of the length of time that has elapsed since the assignment was made, and the long continuance of this litigation, it is probable that all the creditors of Smith & French have already intervened, or are ready to do so whenever it is known that they have that right. For these reasons we think 30 days' public notice by advertisement in a newspaper published in the Indian Territory, to all creditors of Smith & French, to appear before the

master, and establish their several debts, will give the creditors sufficient time to intervene, and that the order of distribution should be made as soon thereafter as the claims filed can be adjudicated.

The decree of the court below is reversed, with directions to proceed therein not inconsistent with this opinion.

TENNANT et al. v. SMITH et al.

(Circuit Court of Appeals, Eighth Circuit. May 1, 1893.)

No. 200.

Appeal from the United States Court in the Indian Territory.

In Equity. Petition of intervention by Tennant, Walker & Co. in a creditors' suit brought by Rainwater, Boogher & Co. and others against Smith & French, Johnson Thompson, and Mrs. J. A. French. The interveners' petition was dismissed on demurrer, and they appeal. Reversed.

S. O. Hinds and W. C. Jackson, for appellants.

N. B. Maxey, Isaac H. Orr, and Harvey L. Christie, for appellee Orr-Lindsley Shoe Co.

W. T. Hutchings, L. P. Sandels, and Joseph M. Hill, for appellees except Smith & French, Johnson Thompson, and Jennie A. French.

Before CALDWELL and SANBORN, Circuit Judges, and THAYER, District Judge.

CALDWELL, Circuit Judge. This case involves the same questions decided in Martin v. Rainwater, — U. S. App. —, — C. C. A. —, 56 Fed. Rep. 7, and is reversed on the authority of that case, and remanded with like instructions.

MEHLIN et al. v. ICE.

(Circuit Court of Appeals, Eighth Circuit. May 1, 1893.)

No. 182.

1. EJECTMENT—DUE PROCESS OF LAW—CHEROKEE LAWS.
   Stat. Cherokee Nation, c. 3, art. 19, § 154, as amended by Act Dec. 7, 1889, provides that when, in an action of ejectment, application is made for a writ of ejectment, the district clerk shall give the defendant 10 days' notice to show cause why the writ should not issue, and the clerk is authorized to determine upon the showing made whether the writ shall issue. *Held*, that this proceeding is sufficient to constitute due process of law, within the meaning of the federal constitution.

2. CHEROKEE NATION—JUDGMENTS—FEDERAL COURTS.
   The proceedings and judgments of the courts of the Cherokee Nation in cases within their jurisdiction are on the same footing with those of the courts of the territories of the Union, and entitled to the same faith and credit; and hence, where a party in a federal court justifies an entry under such writ of ejectment, the sufficiency of the evidence before the clerk to justify its issuance cannot be inquired into.

3. SAME—COURTS—JURISDICTION—GENERAL APPEARANCE.
   Where a person responds to the notice so issued, enters a general appearance, and defends the case on the merits, he thereby waives any exemption from the jurisdiction of the courts of the Cherokee Nation to which he, as a white citizen of the United States, may be entitled.