places of business, or in the city of Macon otherwise than at the market house, and from selling their meats at any time during market hours, as prohibited in said ordinances; and from collecting or attempting to collect from complainants the license fee fixed by such ordinances for the sale of meats elsewhere than in the market house; and must be further enjoined from preventing the complainants, who have rented stalls at the market house, from selling at the market house as much of their meats as they may have the opportunity to sell, to any and all persons who may there desire to buy. That, in so far as the said market ordinances are intended to support these restrictions, they are unconstitutional and void.

Let the demurrer be overruled. The answer is held insufficient.

MAYOR, ETC., OF CITY OF MACON v. GEORGIA PACKING CO. et al.

(Circuit Court of Appeals, Fifth Circuit. November 28, 1893.)

No. 192.

1. CIRCUIT COURT OF APPEALS—JURISDICTION OF CONSTITUTIONAL QUESTIONS.
The questions whether the business of dealing in western meats constitutes interstate commerce (Const. art. 1, § 8, par. 3), and whether certain city ordinances discriminate against such commerce, involve the construction or application of the constitution, and cannot, therefore, be considered by the circuit court of appeals. Judiciary Act, March 3, 1891, §§ 5, 6.

2. SAME—APPEAL FROM INTERLOCUTORY DECREE.
The circuit courts of appeal can have no jurisdiction of an appeal from an interlocutory decree granting or continuing an injunction, under section 7 of the judiciary act of March 3, 1891, if the case is of such a character that they would have no jurisdiction of an appeal from a final decree therein.

Appeal from the Circuit Court of the United States for the Southern District of Georgia.

In Equity. Bill by the Georgia Packing Company and W. L. Henry against the mayor and council of the city of Macon. Defendants demurred, and on rule to show cause the circuit court rendered a decree for an injunction pendente lite. 60 Fed. 774. An appeal was taken from this interlocutory decree, under section 7 of the act of 1891.

The Georgia Packing Company, a corporation organized under and in pursuance of the laws of the state of Georgia, and having its principal place of business in the city of Macon, Bibb county, Ga., and W. L. Henry, a citizen of the United States, residing in Macon, in Bibb county, Ga., brought their bill in the court below against the mayor and council of the city of Macon, state of Georgia, complaining that by reason of certain ordinances of the said mayor and council, fully set out in their bill, their business as wholesale and retail butchers and dealers in western meats in the city of Macon was interfered with and discriminated against, the exact method and manner of discrimination and interference being fully and in detail set forth in the bill; and thereupon complainants averred as follows: "Your orators further aver that said ordinance, viewed as a scheme to collect revenue, as aforesaid, is in violation of the constitution of the state of Georgia and of the United States, in this: that it prescribes a cheaper license tax for those who sell as well in the market and at their regular place of business than for those who sell at their regular place of business, and no tax at all for farmers selling in

the city after market hours, while handlers of western meats, not stall holders in the market, must pay a tax of five hundred dollars to sell in the city after market hours; the constitution of Georgia providing that 'all taxation shall be uniform upon the same class of subjects,' and the constitution of the United States providing that citizens of different states shall be entitled to the equal protection of the laws. Said ordinance is likewise an attempt to regulate interstate commerce, and in such a manner as to deny to citizens of states other than the state of Georgia, selling their meats through your orators, the equal protection of the laws, and is illegal for that reason. Your orators further aver that the said mayor and council of the city of Macon well knew that the said ordinance could not be sustained as a tax measure under the constitution of the state of Georgia, and that, therefore, they have endeavored to give the appearance of inspection laws to the ordinance, which, in fact, has none of the elements in it which would render the same legal as a police measure, it not being based on consideration of public health or morals, or intended to prevent the crowding and obstruction of the streets and public places; and that, by reason of the premises, the enforcement of said ordinance has and is operating to deprive your orators of their inalienable right to carry on their aforesaid business without any unnecessary restrictions or hindrances, whereby your orators have been and are being deprived of their liberty and property, without due process of law." The bill prayed for a perpetual injunction, and for an injunction pendente lite, restraining the defendants from in any manner enforcing said ordinances against orators. To this bill the defendants demurred upon the following grounds, to wit: "(1) Because it appears upon the face of said bill that this court has no jurisdiction of the subject-matter thereof, it appearing that all the parties, plaintiffs and defendants, are citizens of the state of Georgia; (2) because it appears on the face of said bill that there is no question raised upon any violation of any part of the constitution of the United States; (3) because it appears that only persons known residents of the state of Georgia, who are affected by the case complained of, and any parties to said bill." And on the same day, without waiving the demurrer, the defendants filed an answer, saying: "That under the charter of the mayor and council of the city of Macon the defendants have the right to regulate the sale of meats in the city of Macon, and to confine sales thereof to the market house in said city during market hours. Further answering, they say that said defendants have the right to fix a license for the sale of meats or other articles in said city. They deny that the effect of the license so fixed by them is to in any way violate the constitution or statutes of the United States." On a rule to show cause why the injunction pendente lite should not issue, the matter of the bill was heard before the circuit court, which thereupon rendered a decree for injunction pendente lite, enjoining and restraining the defendants from enforcing against complainants, or any of them, certain market ordinances of the city of Macon, specifying the ordinances complained of in the bill, and reciting the following reason: "It having been made to appear to the satisfaction of the court that said ordinances, in their necessary operation, and in the manner in which they have been and are being applied by the said defendant and its officers, discriminate in favor of the meat products from the country contiguous to Macon within the state of Georgia and against the meat products of other states, and impose restrictions and burdens upon interstate commerce in contravention of the constitution and laws of the United States" From this interlocutory decree an appeal has been prosecuted under section 7 of the act of 1891, creating and establishing this court, assigning, among others, the following errors: "Second. Because the court erred in holding, deciding, and decreeing that the said ordinances complained of in any wise interfere with the operation of the rights of complainants, so far as interstate commerce is concerned. Third. Because the court erred in holding, deciding, and decreeing that the said complainants were entitled to an injunction because the said ordinances, or any of them, are a restriction upon interstate commerce."

Dessau & Hodges, for appellants.

Marion Erwin, for appellees.

Before PARDEE and McCORMICK, Circuit Judges, and LOCKE, District Judge.

PARDEE, Circuit Judge (after stating the facts). From the bill, the demurrer, the answer, the decree of the court, and the assignment of errors, each and all, it clearly appears that the case is one that involves the construction or application of the constitution of the United States. As the parties are all citizens of the same state and district, the jurisdiction of the court below rests entirely upon the case as one arising under the constitution of the United States.

The questions presented are: First, whether the business of the complainants is interstate commerce, within the meaning of the third paragraph of section 8, art. 1, of the constitution; and, second, do the ordinances complained of amount to a regulation of interstate commerce, and, as such, discriminate against complainants' business?

The fifth section of the act entitled "An act to establish circuit courts of appeals, and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891, provides "that appeals or writs of error may be taken from the district courts or from the existing circuit courts direct to the supreme court in the following cases: * * * In any case that involves the construction or application of the constitution of the United States." The sixth section of said act provides "that the circuit courts of appeals established by this act shall exercise appellate jurisdiction to review by appeal or by writ of error final decrees in the district court and in existing circuit courts in all cases other than those provided for in the preceding section of this act, unless otherwise provided by law." The supreme court, in construing this section, says: "The appellate jurisdiction not vested in this court was thus vested in the court created by the act, and the entire jurisdiction distributed." McLish v. Roff, 141 U. S. 661–666, 12 Sup. Ct. 118; Lau Ow Bew v. U. S., 144 U. S. 47–56, 12 Sup. Ct. 517.

The seventh section of said act provides "that where, upon a hearing in equity in a district court or in an existing circuit court, an injunction shall be granted or continued by an interlocutory order or decree in a cause in which an appeal from a final decree may be taken under the provisions of this act to the circuit court of appeals, an appeal may be taken from such interlocutory order or decree granting or continuing such injunction to the circuit court of appeals."

As, under the sixth section, this court can have no jurisdiction over any final decree rendered in the cause in which this present appeal is taken, it follows that we have no appellate jurisdiction over any interlocutory decree rendered therein, granting or continuing an injunction.

The appeal is dismissed.

REJALL v. GREENHOOD et al.

(Circuit Court, D. Montana. November 6, 1893.)

No. 236.

1. COURTS—CONFLICT OF JURISDICTION—CREDITOR'S BILL.
A creditor's bill filed in a federal court alleged that one of the defendants therein had made an assignment, in which plaintiff was a preferred creditor, and that the other defendants, though having notice of this assignment, had taken possession of the property, and had converted a part of it. These defendants filed a plea alleging that they had sued in the state court to have the assignment set aside, as fraudulent, and that a receiver had been appointed in such suit. *Held*, that the pending of this suit was no bar to the bill in the federal court, especially as plaintiff was not a party in the state court.
2. SAME—RECEIVER OF STATE COURT.
The possession of the property by the receiver of the state court is no bar to the plaintiff's bill, as against those who instituted the suit in which the receiver was appointed.
3. SAME.
Such bill cannot be maintained against the receiver, however, without permission for that purpose first obtained from the state court.
4. EQUITY—PLEADING—OBJECTIONS TO BILL—ANSWER.
The objection that the bill cannot be maintained because it shows that plaintiff was given preference for an amount greater than that which was actually due him, and hence that the assignment was fraudulent, can only be raised by answer.

In Equity. Bill by Ernest Rejall against Greenhood, Bohm & Co., Max Kahn, L. H. Hershfield, Aaron Hershfield, Charles M. Jefferis, William Muth, and Merchants' National Bank.

George F. Shelton, for complainant.
McConnell, Clayberg & Gunn, for defendants.

KNOWLES, District Judge. This is a suit in equity brought by complainant for himself, and in behalf of all other creditors of Isaac Greenhood and Ferdinand Bohm. The bill sets forth that the complainant is a creditor of said Greenhood & Bohm; that on the 12th day of February, 1892, the said Greenhood & Bohm assigned all their property to Max Kahn for the benefit of their creditors; that complainant was made a preferred creditor, with others, to the sum of $45,000; that said Max Kahn accepted said trust, and entered upon the duties thereof, and took possession of all of said property; that the defendants the Merchants' National Bank, L. H. Hershfield, and Aaron Hershfield had notice of said assignment, and that on the 13th day of February, 1892, the said defendants, the Merchants' National Bank of Helena, L. H. Hershfield, Aaron Hershfield, and one Charles M. Jefferis, with force and arms, broke into the store building formerly occupied by the said Greenhood & Bohm, and which said store and building were in the actual possession of the said assignee at the time, and forcibly took possession, and seized all of the goods and chattels so assigned to said Max Kahn, and deprived him of the possession of the same; that subsequently said Merchants' National