

are before the court; but their presence ousts the court of jurisdiction, and should the suit be dismissed as to them, as they are necessary and indispensable parties, no decree could be rendered that would afford full and final relief.

The plaintiff, on the facts set forth in its bill, deemed those representing the Gain estate necessary parties to this suit; but now, when the difficulties suggested are presented, the claim is made that they are merely formal parties; and the court is asked, in substance at least, to dismiss the bill as to them, and then proceed, under the authority of rule 47, equity practice, without their presence. I do not think said rule applicable to this case as it is now presented to me, and, besides, it is well settled that, notwithstanding said rule, a circuit court can make no decree in a suit in the absence of parties whose rights must necessarily be affected thereby, and that all persons whose interests will be directly affected by the decree are indispensable parties. *Shields v. Barrow*, 17 How. 130; *Coiron v. Millaudon*, 19 How. 113; *Gregory v. Stetson*, *supra*.

I hold that the parties to this suit as made by the plaintiff when it was instituted are all, not only necessary, but indispensable, to the proper hearing and final disposition of the real and substantial controversy involved in it; that such controversy is not divisible; and that, as it is not between citizens of different states, the bill must be dismissed. I will sign a decree to that effect.

AMERICAN NAT. BANK OF DENVER v. NATIONAL BENEFIT & CASUALTY CO. et al. (WISWALL, Intervener).

(Circuit Court, D. Colorado. November 13, 1895.)

No. 3,324.

1. CORPORATIONS—DISSOLUTION—TITLE OF RECEIVER—WISCONSIN STATUTE.

The legal effect of the appointment of a receiver of a corporation, in proceedings by the attorney general for its dissolution, under the statute of Wisconsin (Sanb. & B. Ann. St. Wis. §§ 1968, 2787, 3241-3247), is to invest such receiver with full title to all the property and effects of the corporation, wherever they may be found, whether within or without the jurisdiction of the court appointing the receiver.

2. REMOVAL OF CAUSES—PARTIES—INTERVENER.

After the entry of a decree for the dissolution of a Wisconsin corporation, under the statute of that state, and for the appointment of a receiver, a corporation of Colorado commenced a suit in a state court against the Wisconsin corporation and one K., trustee, seeking to have certain funds in the hands of K., as trustee, applied to the payment of a judgment against the Wisconsin corporation. The receiver filed an intervening petition, asking to be made a defendant, and setting up his appointment and his title to the property. He was admitted as a party, and several orders were made on his application, but these orders were afterwards vacated, and an application for removal to the federal court, made by the receiver, was denied by the state court. *Held*, that the receiver obtained a standing as a party defendant by the filing of his petition of which he could not be deprived; that he and the plaintiff were the only real parties, the Wisconsin corporation being incapable, since its dissolution, of being a party, and K. having no interest in the controversy; and that the receiver was entitled to remove the case to the federal court.

This was a suit by the American National Bank of Denver, Colo., against the National Benefit & Casualty Company and Fred. C. Kilham, trustee. The suit was commenced in a court of the state of Colorado. George N. Wiswall, receiver of the National Benefit & Casualty Company, filed an intervening petition and a petition for removal, and applies to docket the case in the federal court.

O'Donnell, Decker & Smith, for plaintiff.

A. Newton Patton, for defendant National Benefit & Casualty Co.

Wells, Taylor & Taylor, for defendant Kilham, trustee.

Riddell, Starkweather & Dixon, for Wiswall, intervener.

Charles Hartzell, for Frank J. Doyle.

HALLETT, District Judge. The National Benefit & Casualty Company, respondent in this suit, prior to June 27th last, was a corporation of the state of Wisconsin. On that day a court of the state of Wisconsin, in a proceeding instituted by the attorney general of that state, decreed its dissolution, and appointed George N. Wiswall receiver of its property and effects. This action of the Wisconsin court was in pursuance to a statute of that state which conferred upon the court full power and authority in that behalf. *Sanb. & B. Ann. St. Wis. §§ 1968, 2787, 3241-3247*. For causes specified in the statute the court is empowered to "decree a dissolution of such corporation and a distribution of its effects." "And thereupon the affairs of such corporation shall be wound up by and under the direction of a receiver, to be appointed by the court, and its property sold and converted into money." Under this statute the effect of a judgment of dissolution and the appointment of a receiver, with reference to the property of the corporation, is not expressly declared in the statute, but it is plain that all such property is thereby transferred to the receiver, wherever it may be situated. As the corporation is ended, and the receiver is required to wind up its affairs and apply its property and effects to the payment of its liabilities, the legal effect is to invest him with full title to all such property and effects, wherever they may be found. In this view, Wiswall has the character of a statutory assignee of the insurance company, with power to take possession of and hold and dispose of the property of the company, wherever it may be, rather than that of an ordinary receiver, whose authority may be limited to the jurisdiction where he may be appointed. And so we are able to say that as to the property and effects of the insurance company in Colorado after the dissolution of that company, and the appointment of Wiswall as receiver in Wisconsin, he had the same title and power of control as in the state of Wisconsin. *Relfe v. Rundle*, 103 U. S. 222; *Bockover v. Association*, 77 Va. 85.

Complainant seeks to enforce a judgment recovered against the insurance company in the month of June last in a court of this state, and to have certain funds in the hands of Kilham as trustee for the insurance company applied to the payment of its judgment. The bill was filed in the district court July 19, 1895, which it will be observed was after the dissolution of the insurance company in the

state of Wisconsin. Wiswall appeared in the case by petition September 16, 1895, and asked to be made a party defendant. He set up in his petition the proceedings in Wisconsin relating to the dissolution of the insurance company and his appointment as receiver, and also his title to the property in controversy in this suit. At first he was admitted as defendant in the suit, and several orders were made relating to the progress of the cause upon his application. On the 19th September, 1895, Wiswall presented to the district court a petition for removing the cause to the circuit court of the United States, in which the principal facts relating to the dissolution of the insurance company and his appointment as receiver, and his claim to the property in controversy, were again set out, but not so fully as in the intervening petition. On the following day, September 20th, all orders before that time made at the instance of Wiswall were vacated and set aside, and on the 14th day of October following the petition for removal was denied. This application to docket the cause in this court as one which may be removed under the act of congress of 1887 has been presented very fully in argument, and is now to be decided.

The principal objection made by complainant to the petition for removal is that Wiswall is not a party to the cause. It is said that if he be a party he is a plaintiff, and not a defendant. But this is clearly a mistake. Wiswall asked to be made a defendant in the suit, and in all his pleading he contests the right of complainant to the corporate property. As to his status as a defendant, it is true that the order admitting him to that position was afterwards set aside, but no order of that kind was necessary. By filing his petition he secured a standing in the case from which he could not be lawfully removed without his consent. *Wood v. Waterworks Co.*, 20 Colo. 253, 38 Pac. 239; *In re Iowa & Minnesota Const. Co.* (Boone v. Construction Co.) 10 Fed. 401; *Burdick v. Peterson*, 6 Fed. 840.

It is also urged that the petition for removal was not filed in apt time, and this seems to rest on the failure of the insurance company to make the application, which must be imputed to Wiswall, as he represents the company. On that point it will be observed that the insurance company, having been dissolved before the bill was filed, was never a party to the suit. It was incapable of becoming a party, and the suit was unilateral until the appearance of Wiswall. Kilham was stakeholder for the insurance company until its dissolution, and after that event for Wiswall, as successor to the company. Kilham has no controversy with any one, except to find the proper and competent party who may be able to relieve him from his charge, and therefore he is not a factor in the case on the question of removal. The substantial parties are the national bank, as complainant, which seeks to appropriate the funds of the insurance company to the payment of its judgment, and Wiswall, as successor to the insurance company, who will contest complainant's right to the fund in behalf of the general creditors of the company. We have therefore a complainant which is, under the law relating to removals, a citizen and resident of the state of Colorado, and a defendant, seeking to remove the cause, who is a citizen and resident of the state of

Wisconsin. Upon all the circumstances appearing in the record, the right of the defendant to remove the cause into this court seems to be complete, and therefore the transcript may be filed and the cause may be docketed as one of which the court has jurisdiction.

FARMERS' LOAN & TRUST CO. v. NORTHERN PAC. R. CO.

(Circuit Court, S. D. New York. October 31, 1895.)

RAILROAD MORTGAGE FORECLOSURES—SAME TRUSTEE UNDER DIFFERENT MORTGAGES—BONDHOLDERS AS PARTIES.

In a suit by a trust company which is trustee under several necessarily conflicting mortgages upon the railroad and its various branches, such trustee is not in a position to fairly represent both sides of the resulting controversies; and the court will therefore permit representatives of the bondholders under the different mortgages to be made parties, to the end that each set of bondholders may be represented by some one whose single object is to secure all to which they are entitled, unhampered by any obligation to opposing parties. *Farmers' Loan & Trust Co. v. Northern Pac. R. Co.*, 66 Fed. 169, followed. *Clyde v. Railroad Co.*, 55 Fed. 445, disapproved.

This was a foreclosure suit by the Farmers' Loan & Trust Company against the Northern Pacific Railroad Company. The original suit was commenced in the circuit court for the Eastern district of Wisconsin, in the Seventh judicial circuit, and auxiliary suits were filed in various other districts, including the present suit the Southern district of New York, where the principal office of the railroad company was situated. The case has been heard upon the application of certain parties representing bondholders under the second and third mortgages to be made parties to the suit.

Herbert B. Turner, for Farmers' Loan & Trust Co.

Michael H. Cardozo, for second mortgage bondholders.

Root & Clarke, for third mortgage bondholders.

LACOMBE, Circuit Judge. The application of Johnston Livingston and others, second mortgage bondholders, and of C. B. Van Nostrand and others, third mortgage bondholders, to be made parties, was granted in the Seventh circuit, and in the propriety of such action this court concurs. The trust company is trustee under different mortgages of the same railroad, or of parts thereof. These several mortgages are necessarily conflicting, and it is manifestly impossible for the trustee to fairly represent both sides in the resulting controversies, except by assuming such a position of neutrality as would seriously affect the force with which such conflicting interests are to be presented for the consideration of the court. Under such circumstances it would seem appropriate to substitute new trustees under all the conflicting mortgages but one. This, however, has not been done in the circuits where the property lies, and will not, therefore, be done here, the admission of representatives of these bondholders being probably sufficient to accomplish the object desired. The provisions in the respective mortgages referred to on the argu-