remaining unpaid, before calling for the security; and long within the statute of limitations, from that time, this suit was brought. If the security had existed as was represented, a foreclosure could well have been brought by the trustee when this suit was brought. This suit is brought as for the avails of the same thing received otherwise, and would seem to be brought in good time. Decree for plaintiff for $7,200.

KEIHL v. CITY OF SOUTH BEND.

(Circuit Court of Appeals, Ninth Circuit. October 6, 1896.)

No. 293.

1. JURISDICTION OF FEDERAL COURTS—FEDERAL RECEIVERS.
   Where the subject-matter of an action involves the acts and rights of a receiver appointed by a federal court, it constitutes a case arising under the laws of the United States, and is therefore within the jurisdiction of a federal court.

2. CONSTITUTIONAL LAW—CITY ORDINANCES—CITY DEBTS.
   A city, by ordinance, conferred upon a water company a franchise for 30 years, and agreed to pay a rental of $7.50 per month for each of 25 hydrants to be put in by the company, which rental was to be paid for so many of said hydrants "as were in good order during the preceding month." At the time the ordinance was passed, the city was indebted beyond its constitutional limit. *Held*, that the contract did not, in and of itself, create an indebtedness in contravention of the state constitution, but created a condition upon which a debt might arise; and the debt, having arisen when the city was taxed beyond the limit, was invalid.

In Error to the Circuit Court of the United States for the Western Division of the District of Washington.

This was an action brought by Chester H. Keihl, as receiver of the South Bend Water Company, against the city of South Bend, to recover money alleged to be due said company as rentals for the use of hydrants. The case is brought here by writ of error.

The defendant in error is a municipal corporation created and organized under the laws of the state of Washington, with the power, among other powers, of contracting for the supply of water to the city of South Bend and its inhabitants for protection against fire and for other purposes. The South Bend Water Company is a domestic corporation organized under the laws of the same state, and by the terms of its articles of incorporation was vested with the powers and privileges of constructing and operating a system of waterworks for the supplying of water to the city and its inhabitants for the extinguishment of fires and for domestic purposes. The city, on August 31, 1891, by an ordinance numbered 100, conferred on the water company a franchise for the term of 30 years, to build and operate waterworks for the purposes stated, on certain terms and conditions, and thereby agreed to pay to the company a rental of $7.50 per month during the life of the franchise for each of 50 hydrants to be put in by the company, which rental was to be paid each month for the number of hydrants in good order during the preceding month, by the proceeds of a sufficient tax to be levied and collected annually on all property in the city; such proceeds to be kept in a separate fund called the "Water Fund." The franchise and agreement were accepted by the company September 30, 1891. Litigation between the company and city ensued in respect to the timely and sufficient construction of the works and compliance on the part of the company with the terms of the franchise. The litigation was compromised by a parol agreement to the effect that a new ordinance, limiting the number of hydrants to 25, and such others as the city should choose to order at the same rental and for the same term, should be passed as a substitute for ordinance numbered 100. Such ordinance, known as "Ordinance No. 118," was accordingly adopted on April 3, 1893, and the litiga-

tion between the parties was, in consideration thereof, dismissed. The new ordinance contained a repeal of all prior ordinances on the subject, but was understood by all parties concerned to be a substitute for ordinance numbered 100, and was in all material respects identical therewith, except as to the number of hydrants, and except in the provision for paying rental, in which latter respect it was provided by Ordinance No. 118 that "said rental shall be paid by warrants drawn on the general fund of said city, and a sufficient tax shall be levied and collected annually upon all taxable property in said city to meet the payments for hydrants rented as herein provided, which tax shall be irrepealable during the continuance of the franchise herein granted." Ordinance No. 118 was accepted by the water company in due time, and its works constructed, and put in operation, and were kept in operation by the company until on and after November 1, 1894. It erected 24 hydrants, as required by Ordinance No. 118, and by itself and the receiver of the company, as hereinafter stated, kept them in good order, and supplied water through them to the city from July 7, 1893, to November 1, 1894, the agreed rental for which period was $2,829.40. The water company having mortgaged its plant to one Horace Phillips, a suit in equity was commenced on May 23, 1894, in the United States circuit court for the district of Washington, Western division, by Phillips, as complainant, against the water company, as defendant, for the foreclosure of the mortgages, in which suit the court appointed the plaintiff in the present suit receiver of all the property of the company, with the usual powers and rights of receivers, and, among others, with the right of continuing the business of the company, and of supplying water to the city and to all of its customers, and to collect all sums due or to become due for water so furnished. The receiver so appointed duly qualified, and took possession of the property. On November 5, 1894, the court in which the foreclosure suit was pending directed the receiver so appointed to bring an action in the same court against the city of South Bend to collect all sums of money due from the city for the supply of water to it by the receiver or by the company prior to the receivership, pursuant to which order the present suit was brought. Warrants drawn in the usual form on the general fund of the city were accepted by the company and the receiver for the water rentals for the months antedating April, 1894; and the conclusion of the court below that for this reason the plaintiff below was not entitled to recover for those months is not now questioned by the plaintiff in error, although they were also sued for. No warrants, however, from April 1, 1894, to November 1, 1894, were issued. For those months the rentals amount to $1,260, and are here contended for by the plaintiff in error.

The last regular assessment of the property of the city for city purposes prior to the passage of ordinance numbered 100 was made May 29, 1891, and the aggregate of the assessment was $2,868,825. At that time there was no outstanding indebtedness of the city. In June, 1891, under a provision of the constitution of the state allowing municipal indebtedness to be incurred by popular vote to the amount of 5 per cent. of the assessed valuation of the property within the city for general city purposes, a bonded indebtedness of the city to the extent of $60,000 was duly voted, and bonds therefor issued. The next regular assessment for city purposes was made June 2, 1892, and aggregated $1,908,478. The then general city debt, over and above the bonded indebtedness of $60,000, less cash in the city treasury, was $10,035.73. The next regular assessment for city purposes was made October 16, 1893, and aggregated $520,138. The then general city debt, over and above the bonded indebtedness of $60,000, less cash in the treasury, was $21,536.61. The amount of the indebtedness of the city over and above the bonded indebtedness of $60,000, less cash in the treasury, on the first day of each month from April 1, 1894, to November 1, 1894, both inclusive, being the period for which the water rentals in suit are claimed, was as follows:

April 1, 1894, net debt, less cash	$27,956 35
May 1, 1894, " " " "	26,481 91
June 1, 1894, " " " "	26,097 12
July 1, 1894, " " " "	26,051 54
Aug. 1, 1894, " " " "	26,196 54
Sept. 1, 1894, " " " "	26,151 83
Oct. 1, 1894, " " " "	26,421 51
Nov. 1, 1894, " " " "	26,562 01

Charles E. Shepard, for plaintiff in error.
Welsh & Thorp, for defendant in error.

Before GILBERT and ROSS, Circuit Judges, and HAWLEY, District Judge.

ROSS, Circuit Judge, after stating the facts as above, delivered the opinion of the court.

The subject-matter of the action, involving as it does the acts and rights of the receiver of the federal court, constitutes a case arising under the laws of the United States, and therefore was within the jurisdiction of the court below. The motion to dismiss the writ of error is, therefore, denied.

The constitution of the state of Washington provides:

"No county, city, town, school district, or other municipal corporation shall for any purpose become indebted in any manner to an amount exceeding one and one-half per centum of the taxable property in such county, city, town, school district, or other municipal corporation, without the assent of three-fifths of the voters therein voting at an election to be held for that purpose, nor in cases requiring such assent shall the total indebtedness at any time exceed five per centum of the taxable property therein, to be ascertained by the last assessment for state and county purposes previous to the incurring of such indebtedness, except that in incorporated cities the assessment shall be taken from the last assessment for city purposes." Const. art. 8, § 6.

The complaint alleges that the contract upon which the action is based was made April 3, 1893,—the date of the adoption of the ordinance numbered 118. At that time the city of South Bend had an outstanding bonded indebtedness of $60,000. The regular assessment for city purposes next preceding that date was made June 2, 1892, and aggregated $1,908,478. The then general city debt, over and above that evidenced by bonds, less cash in the city treasury, was $10,035.37; making the aggregate amount of the city indebtedness at the time of the making of the contract sued on $70,035.37,—far in excess of the constitutional limit to the indebtedness of the city. If, therefore, the effect of the contract declared on between the South Bend Water Company and the city of South Bend was itself the attempted creation of an indebtedness on the part of the city for water to be supplied to the city and its inhabitants by the water company, it was clearly void, as being in contravention of the express provision of the constitution of the state. That provision constitutes an absolute limitation upon the power of the city to contract any indebtedness for any purpose whatever beyond the limit specified, except by virtue of the vote of the people to be affected. Lake Co. v. Rollins, 130 U. S. 662, 9 Sup. Ct. 651; Lake Co. v. Graham, 130 U. S. 674, 9 Sup. Ct. 654; Doon Township v. Cummins, 142 U. S. 366, 12 Sup. Ct. 220.

The contract here involved provided that the water company should put in the city 25 and such other hydrants as the city should choose to order for the supply of water, and that the city would pay to the company, as rental, during the period of 30 years, $7.50 each month for each of the hydrants provided for that was in good order during the preceding month; such rental, according to the contract, to be provided for by a sufficient tax "levied and collected

annually upon all taxable property in said city to meet the payments for hydrants rented as herein provided, which tax shall be irrepealable during the continuance of the franchise herein provided," and to be paid by warrants drawn on the general fund of the city.

We are unable to see how this contract can be properly said to have created an indebtedness against the city at the time of its execution. There is at least one element of uncertainty about it that renders it impossible to fix upon, or even estimate, what amount the city may become indebted in under its provisions; for the rental provided for is only to be paid for such hydrants as were in good order during the month preceding the time for the payment of the rental. If none of them were in good order during that period, nothing would become payable from the city therefor under the contract. If some were in good order and others not, for the rental of only those that were in good order would the city be liable. Certainly, under such circumstances as these, it seems unreasonable to hold that an indebtedness arose against the city at the time of the execution of the contract. If so, in what amount? It is impossible for any one to say. It is only in the event the company supplies water by means of the specified hydrants, and in the event they are kept in good order, that an indebtedness therefor on the part of the city arises; and then only at the rate of $7.50 a month for each of the hydrants that were in good order during the preceding month. We are of opinion that the contract in question cannot be properly held to have in and of itself created an indebtedness in contravention of the constitution of the state. It provided, however, for conditions upon which an indebtedness against the city might arise. If, when such indebtedness would otherwise arise, the city was already indebted in an amount equal or exceeding the constitutional limit, it would fall within the constitutional prohibition, and never acquire any validity; for all contracts are made subject to constitutional as well as statutory provisions, and in this case the South Bend Water Company contracted with knowledge of the fact that by the constitution of the state, of which the city of South Bend formed a part, it was provided that the city should not, for any purpose, become indebted in any manner to an amount exceeding 1½ per centum of the taxable property of the city, according to the last preceding assessment roll, without the assent of three-fifths of the voters therein voting at an election to be held for that purpose. In the present case there was no such assent, and the facts show that at the time the indebtedness sued for would otherwise have arisen the city was already indebted far beyond 1½ per centum of the taxable property of the city according to the last preceding assessment roll. Judgment affirmed.

WESTENFELDER v. GREEN et al.

(Circuit Court, D. Oregon. November 12, 1896.)

No. 1,941.

1. ADVERSE POSSESSION—AGENCY—GUARDIAN AND WARD.
Where one has entered into possession of property as agent for the owner, and after such owner's death is appointed guardian of his children, and continues to hold the property, his possession is that of his wards, and is adverse to any others claiming to be children and heirs of the decedent; and the owner's death and the appointment as guardian are sufficient notice to such claimants that the agency has terminated, and his holding is adverse to them. Westenfelder v. Green, 34 Pac. 23, 24 Or. 448, followed.

2. SAME—POSSESSION OF CO-HEIRS.
The possession of persons who enter and hold, claiming exclusive title as sole heirs, is adverse to other heirs.

3. SAME—PAYMENT OF TAXES IN NAME OF DECEDENT.
The fact that a guardian of minor heirs, holding lands for them, charges taxes paid thereon to the estate of the decedent, does not affect the exclusive character of his possession, as being for his wards, and adverse to others claiming to be heirs.

4. SAME—POSSESSION OF DOWRESS.
One holding as dowress, by virtue of dower proceedings instituted against heirs in possession claiming exclusive title in fee, holds for such heirs, as against other persons claiming to be heirs.

5. SAME—DEEDS—COLOR OF TITLE.
Where there is a question as to whether a conveyance was within a statutory prohibition, and subsequently the grantors therein have executed a deed to certain persons, who are holding as heirs of one claiming under the former deed, and adversely to others claiming to be heirs of the same person, the latter deed is sufficient to constitute color of title and set the statute of limitations running in favor of the grantees therein.

6. SAME—APPOINTMENT OF GUARDIAN.
A question as to the legality of the appointment of a guardian who holds property for minor heirs does not affect the fact of his possession, or its adverse character in favor of those whom he assumes to represent.

This was a suit by Ludwig Westenfelder against Flora E. Green, Obed Green, and Frederick Westenfelder, to quiet title to a certain parcel of land.

G. G. Ames, for complainant.
W. W. Thayer and E. B. Williams, for defendants.

BELLINGER, District Judge. This is a suit to quiet the title to the east 30 feet of lot 1 in block 167 in the city of Portland. In 1856 Jacob Westenfelder, a native of Germany then recently arrived in the country, married one Mary Ann Woolen, by whom he had two children,—Clementena, afterwards married to John F. Dawes, and Mary Ann, who died without issue at the age of 17 years. On September 11, 1862, this Jacob Westenfelder purchased lot 1 in block 167, including the premises in dispute, for $700, and at once went into possession of the lot, where he remained until the death of his wife, Mary Ann, which occurred in the latter part of that year. This purchase was from W. D. Carter and wife, who claimed title under a deed of June 9, 1862, from Franklin Cheney, who claimed from W. W. Chapman and wife by deed executed September 8, 1853. These several deeds con-

tained full covenants of warranty. Shortly after his wife's death Jacob went to the mines in Idaho, first having constituted Joseph E. Sedlack his agent, with authority to care for this lot and its improvements, to collect rents, pay taxes, etc. Some five or six years thereafter Jacob died intestate in Idaho. Upon learning of Jacob's death, and on June 8, 1869, Sedlack applied for and was granted letters of guardianship for the two children of Mary Ann, who were then in Marion county, where they had resided since their mother's death. Sedlack continued in the control and management of the property until June 14, 1880, when it was sold by Clementena and her husband, subject to dower, as hereinafter stated, to O. Green, one of the defendants, her sister having died in the meantime. O. Green thereafter conveyed to the defendant Flora, his wife. On September 5, 1879, Eva Schroeder, claiming to be the widow of Jacob Westenfelder, made application for assignment of dower, and the east 30 feet of the lot, being the premises in dispute, was set off to her on January 5, 1880. The dowress' possession continued until July 24, 1890, when the plaintiff secured possession by ejectment against parties in possession under her.

By section 4 of the donation act,—the act of September 27, 1850, under which Chapman's title was derived,—all future contracts, by any person entitled to the benefits of the act, before receipt of patent, were prohibited. This prohibition remained until removed by the act of July 17, 1854. It is claimed for plaintiff's title that the deed of Chapman to Cheney, executed September 8, 1853, is not within the prohibition, for the reason that such deed was merely to carry out a contract of sale made in June, 1850, and was in confirmance of a conveyance by Chapman to Cheney at that time; the established doctrine being that the prohibition of section 4 of the donation act did not apply to antecedent contracts. To establish the fact of this prior contract and deed, the following recital, in the deed to Cheney of September 8, 1853, is relied upon:

"This indenture witnesseth, that, in consideration that on the —— day of June, A. D. 1850, Stephen Coffin, Daniel H. Lownsdale, and the said W. W. Chapman, by deed of quitclaim, conveyed to W. W. Chapman, who conveyed to Cheney, the property hereinafter described," etc.

Such is plaintiff's record title.

In 1871, W. W. Chapman and wife, in confirmation of his prior deed or deeds, and presumably upon the assumption that Clementena and Mary Ann, children of Mary Ann Woolen, were the heirs of Jacob Westenfelder, executed their deed to lot 1, block 167, to said children; and in 1875, W. W. Page also executed a like deed, to relieve the property from the lien of a judgment in his favor. This last deed of Chapman is relied upon by the defendants as constituting title, or at least "color of title," under which the bar of the statute of limitations is invoked in favor of the defendants. Both parties also claim title under the statute of limitations. Sedlack, having been in possession as the agent of Jacob Westenfelder since 1862, was, as already stated, appointed guardian of the Oregon children on January 8, 1869; and in that relation, as is claimed, his possession continued until the assignment of dower in

favor of Eva Schroeder was had January 5, 1880. The possession of the dowress was continuous and uninterrupted for more than 10 years, and until the ouster of her agents by the plaintiff in 1890.

The plaintiff, having introduced evidence tending to prove his heirship, contends (1) that Sedlack's possession as the representative of Jacob Westenfelder was not changed by his appointment as guardian of the Oregon children, and that he could not accept a trust hostile to that held by him as Westenfelder's agent and to the true heir without giving notice that his future holding would be adverse; and (2) that the possession of the dowress was for the true heir. It is further contended, in that behalf, that the county court was without jurisdiction to appoint Sedlack, and that such appointment was therefore void. On the other hand, the contention is made (1) that plaintiff has not shown himself to be the son of Jacob Westenfelder; (2) that the Chapman deed, under which Jacob Westenfelder claimed, was void under section 4 of the act of September 27, 1850; (3) that the possession of Sedlack, from the date of his appointment as guardian of the Oregon children, June 8, 1869, was in the right of such children, and was hostile to plaintiff; and (4) that the possession of the dowress was for the Oregon children, because the dower was taken as out of their estate, and was against them, they being the parties against whom the proceeding for assignment of dower was had.

The case of Westenfelder v. Green, 24 Or. 448, 34 Pac. 23, was a law action by this plaintiff against the defendant Green to recover that part of lot 1 in block 167 not involved in this suit. It is held, in effect, that the possession of the lot by Sedlack was that of the two Oregon children, since he held possession by virtue of his relation to them as guardian; that he could not change the character of his holding by any admission or declaration he might make. It is further held that the rule that the possession by one heir or tenant in common is the entry and possession of all did not apply in that case, because the interests of the Oregon claimants were adverse to the plaintiff; and this is upon the ground that, if the plaintiff's theory is true, the Oregon children were not heirs at all, but strangers to the title, and entered into the possession as mere trespassers, in a mistaken belief of their heirship, and, on the other hand, if the Oregon children were in fact heirs, then their entry was in their own right. If I was inclined to dissent from this view, I should hesitate to do so, where the result would be to maintain the title of one set of claimants in the supreme court of the state, and of the other set in this court. There is nothing in the facts as they appeared in the supreme court of the state to distinguish the two cases, unless it is in the statement in the former case that Sedlack in his capacity as guardian took possession of the land in controversy, while in this case it appears that Sedlack was already in possession as Jacob Westenfelder's agent at the time of his appointment as guardian. Upon this fact it is claimed by the plaintiff that Sedlack could not accept a trust hostile to that held by him as agent, and to the true

heirs, without first giving notice that his future holding would be adverse. In order to hold for the Oregon children, it was not necessary that Sedlack should surrender the possession acquired by him as agent. Although a party may enter into possession in privity with the true owner, he may, without first surrendering the premises, dissever such relation, and claim by adverse title. Creekmur v. Creekmur, 75 Va. 430. It is enough if knowledge of such adverse holding is brought home to the owner, or notice of collateral facts from which such knowledge will be implied. Wells v. Sheerer, 78 Ala. 142. The death of Jacob Westenfelder terminated the agency under which Sedlack held at the time. The true owner could not thereafter have been misled into the belief that the possession of Sedlack was in the right in which he entered. The death of their father was a fact from which the plaintiff and his brother must have inferred that Sedlack, during the ensuing 10 years and more, was not holding under the agency under which he entered. His appointment as guardian of the Oregon children, and the assumption of such trust, was a fact from which the present claimants were to infer a holding adverse to them by the guardian. There was no privity between them and the Oregon children, for whom Sedlack was acting. If the facts put forward by them as evidence of their right are true, the Oregon children are not the heirs of Jacob Westenfelder, and Sedlack's possession as guardian was against the right of Ludwig, the plaintiff, and his brother.

It is argued that, inasmuch as the claim of Sedlack and the Oregon children is the measure of their right, their claim as heirs only entitles them to possession jointly with the other heirs, and only entitles them to hold for themselves for their share, and for the other heirs for the rest of the estate. If this is true, then, as between different heirs or tenants in common, the possession of a part can never be adverse to the rest, no matter what the intention of those in possession is, nor how fully informed the rest may be as to such intention. The argument for the plaintiff assumes that, where one is in possession as heir, such possession is for the benefit of all who are in fact heirs, without reference to the extent of the interest claimed by the one in possession. In Ricard v. Williams, 7 Wheat. 60, cited for plaintiff, the doctrine that applies in such a case is thus stated:

"There is no doubt that, in general, the entry of one heir will inure to the benefit of all, and that, if the entry is made as heir, and without claim of an exclusive title, it will be deemed an entry not adverse to, but in consonance with, the rights of the other heirs. But it is as clear that one heir may disseize his co-heirs, and hold an adverse possession against them, as well as a stranger. And, notwithstanding an entry as heir, the party may afterwards, by disseizure of his co-heirs, acquire an exclusive possession, upon which the statute will run. An ouster or disseizure is not, indeed, to be presumed from the mere fact of sole possession; but it may be proved by such possession accompanied with a notorious claim of an exclusive right."

The fact, therefore, that the entry was as heir does not make such possession necessarily inure to the benefit of all who are heirs. It is only when such entry and possession is without claim of an exclusive title that it has that effect. The claim of Sedlack and

of the Oregon children is the measure of their right. That claim was as sole heirs. It was hostile to the claim made in the plaintiff's behalf, as his claim is hostile to theirs. Whether the possession is adverse or not is a question of intention upon the one part, and of knowledge, or of facts from which knowledge is inferred, upon the other. Nor is the exclusive character of the possession of the Oregon children affected by the fact that taxes paid by Sedlack in the meantime were charged by him to the estate of Jacob Westenfelder. These payments cannot have the legal effect of recognizing right or title to the land upon which the taxes were paid in those now claiming to be heirs, but whose existence was at the time not known to the Oregon children, and whose heirship the latter have never admitted. Moreover, the act of the guardian in charging the taxes to the estate of Jacob Westenfelder can no more prejudice his wards in their possession than can his statements made during the same time.

I am also of opinion that the possession of Eva Schroeder must be held to be for the Oregon children. That possession was obtained in a proceeding brought against them alone as owners of the fee. There is no privity between them and those who claim through the first wife, Anna Stein. If the claim of the latter to be the heirs of Jacob Westenfelder is well founded, the Oregon children were without title or right of possession. Moreover, the proceeding under which Eva Schroeder obtained her possession not only did not bind the plaintiff and his brother, but, upon the facts presented in their behalf, her marriage with Jacob Westenfelder took place while Anna Stein was living, and she was without any right of dower in the premises. Neither the possession of Eva Schroeder as dowress, nor that of the Oregon children as heirs, was consistent with the claim and title put forward by the plaintiff and his brother, and the possession so held cannot, therefore, inure to their advantage.

It is not material to inquire whether or not the deed of September 1, 1871, by Chapman to Clementena and Mary Ann, conveyed title. The deed purported on its face to convey the title of the land in dispute to the Oregon children. Any title to these premises must have been derived from Chapman. It is at least open to serious question whether Chapman's prior deed of September 8, 1853, to Cheney, operated, under the circumstances, to convey any title. At that time the prohibition of section 4 of the donation act against future contracts before patent by the government grantees was in force. That deed was, therefore, within the prohibi tion, unless it was made to carry out a contract entered into prior to the passage of the donation act. The evidence of this prior contract is the recital in the Cheney deed "that, in consideration that on the ——— day of June, A. D. 1850, Stephen Coffin, Daniel H. Lownsdale, and the said W. W. Chapman, by deed of quitclaim, conveyed to W. W. Chapman, who conveyed to Cheney, the property hereinafter described," etc. Do the words "who conveyed to Cheney," etc., necessarily imply a conveyance by Chapman to Cheney in June, 1850? Admitting, for the sake of argument, that

they do, there is such room for controversy as gives at least colorable ground for the opposite contention. If the recital does not require the inference claimed for it, then, the Cheney deed being within the prohibition of the donation act, the legal title to the disputed lot was in Chapman at the date of the deed to Clementena and Mary Ann, and the legal title passed to them by that deed; all of which goes to show that the latter deed is at least sufficient to constitute color of title, and set the statute of limitations running in favor of the grantees in it, claiming to hold adversely. "A deed purporting on its face to convey the title of land to the grantee is sufficient to constitute claim and color of title in such grantee, although the title, when traced back to its source, is not legal and valid." Nelson v. Davidson, 160 Ill. 254, 43 N. E. 363.

It is not material to determine whether Sedlack's possession prior to the Chapman deed of September 1, 1871, as guardian claiming for the Oregon heirs, constituted color of title, and set the statute in motion. There was color of title, at least, after that deed, if not before, and there was no hostile interruption of that possession until 1890. Nor is it material to determine whether the county court had jurisdiction to appoint Sedlack as guardian. He assumed that trust, and his possession was in fact as guardian. The legality of his appointment does not affect the fact of his possession, nor its adverse character in favor of those whom he assumed to represent.

Ordered that the bill of complaint be dismissed.

MERCHANTS' EXCH. BANK OF MILWAUKEE, WIS., v. McGRAW, Sheriff.

(Circuit Court of Appeals, Ninth Circuit. October 19, 1896.)

No. 294.

1. BILL OF LADING—DELIVERY AS SECURITY FOR ADVANCES.
   The Washington statute (Hill's Ann. St. §§ 2407–2413) does not in any manner change the rule that the delivery of a bill of lading as security for an advance of money, with intent to transfer the property in the goods, is a symbolical delivery of them, and vests in the party making the advance a special property, sufficient to enable him to maintain replevin, trover, or any action against one who attaches them upon a writ against the general owner.
2. SAME—PRESUMPTIONS.
   The issuance of a bill of lading in the name of the consignee does not necessarily vest title in him, but it raises a presumption to that effect which may be controlled by special clauses in the bill, or by evidence aliunde.
3. SAME.
   Plaintiff guarantied a purchaser's draft for payment of certain goods, under agreement that it should have the goods, bill of lading, and invoice as security. The goods were to be paid for before delivery, but they were placed in a depot, a bill of lading was issued in the purchaser's name, and the draft was subsequently cashed. After the bill of lading issued, and before payment of the draft, the goods were levied on under execution against the purchaser. *Held*, that the effect of the bill of lading as prima facie evidence of title in the purchaser was overcome by the facts which proved the intention that title should be in the guarantor.