

a right to a judicial hearing, before being finally barred of his right to a patent, secured by section 4915 of the Revised Statutes, in my opinion, remains unaffected by the act to establish the court of appeals of the District of Columbia.

The contention that this court cannot entertain jurisdiction of the present bill because Bernardin and Northall are both citizens of this state cannot be successfully maintained. The Revised Statutes (sections 629 and 711) give the federal courts exclusive jurisdiction of causes relating to patents. This is the only court that could take cognizance of the present suit, because, being a patent case, no state court could take jurisdiction, and in the federal courts the suit must be brought in the district whereof the plaintiff or defendant is a citizen. Here the demurrant is shown to be a citizen of the district of Indiana, and hence he is properly suable here.

The demurrer to the bill is overruled.

A. B. DICK CO. v. WICKELMAN.

(Circuit Court, S. D. New York. December 31, 1896.)

EQUITY—INTERLOCUTORY DECREE—SETTING ASIDE.

A motion to set aside an interlocutory decree will be denied, if based only on grounds considered on the hearing.

D. H. Driscoll, for plaintiff.

Frederick A. Wickelman, pro se.

WHEELER, District Judge. This cause has now been heard upon a motion by the defendant to set aside the interlocutory decree. The principal ground of the motion is the alleged wrongful use of *Potts & Co. v. Greager*, 155 U. S. 597, 15 Sup. Ct. 194, and 70 O. G. 494. But that case was noticed and considered by the court before, and, if any error arose in the use made of it, such error was an error of the court, and not a misuse of counsel. Nothing is made to appear now that was not shown before; no error is pointed out or perceived that should set aside the decree as the case is now here viewed; and if such error is still supposed to exist it can be corrected on appeal, if found. Motion denied.

MUTUAL LIFE INS. CO. v. DOHERTY.

In re ROGERS' APPEAL.

(Circuit Court of Appeals, Third Circuit. December 2, 1896.)

No. 39.

MORTGAGES—MISNOMER—SUBSEQUENT JUDGMENTS.

The owner of certain land, which had been conveyed to him as G. D., made a mortgage thereof under the name of G. S. D., which was at once recorded. Subsequently certain creditors of said D., who knew these facts, took judgments against him as G. D., and thereupon claimed priority over

the mortgage, on the ground that their judgments were taken in the proper name of the owner of the land. *Held* that, whether such owner's name was G. D. or G. S. D., the claim of priority was untenable. 75 Fed. 951, affirmed.

Appeal from the Circuit Court of the United States for the Western District of Pennsylvania.

This was a suit by scire facias upon a mortgage, and was brought by the Mutual Life Insurance Company of New York against George S. Doherty. The case was heard below upon exceptions filed by William Rogers and Thomas J. Rogers, subsequent judgment creditors, to the marshal's return of his distribution of the fund, and such exceptions were overruled and the distribution confirmed. 75 Fed. 951. The exceptants have appealed.

J. H. Beal, for appellants.

Before DALLAS, Circuit Judge, and BUTLER and WALES, District Judges.

DALLAS, Circuit Judge. The question in this case is presented by the third specification of error, which avers that the court below erred in not sustaining an exception to the marshal's schedule of distribution of the fund in controversy, as follows:

"The marshal should not have distributed any portion of said fund to the plaintiff, because the plaintiff had no lien on said land by virtue of its said mortgage, and especially it had no lien upon said land as against the judgments of the exceptants; said mortgage being made and executed by George S. Doherty, and so recorded, while the legal title to the land described therein, and levied upon under such execution, was at the time in George Doherty, as appears by the records of the recorder's office in Allegheny county, in Deed Book, vol. 825, p. 597; the judgments of said exceptants being against George Doherty, in whose name the legal title stood."

The facts are, in part, thus stated in the opinion of the court below:

"On the 7th day of October, 1895, the defendant, George S. Doherty, executed and delivered to the plaintiff, the Mutual Life Insurance Company of New York, his mortgage upon a lot of land situate in Allegheny City, Allegheny county, Pa., to secure a debt of \$10,000. The mortgage is in the defendant's proper name, George S. Doherty, and is so signed and acknowledged. It was recorded in the recorder's office of Allegheny county on the 15th day of October, 1895. On May 21, 1896, suit by scire facias upon the mortgage was brought in this court, and on June 8, 1896, a judgment therein for the sum of \$10,878 was entered in favor of the plaintiff. A writ of levavi facias was issued upon the judgment, and by virtue thereof the marshal sold the mortgaged premises. In and by his special return the marshal appropriated out of the proceeds of sale to the plaintiff in the writ, the Mutual Life Insurance Company, the amount of the judgment on the mortgage, and interest."

The appellants insist that the "proper" name of the mortgagor is George Doherty, and not (as in the above extract) George S. Doherty; but whether, for every purpose, the one name or the other should be regarded as the true one, is unimportant. We think the learned judge was right about it, but do not rest our judgment upon any such abstraction, but upon the fact—which, for the present purpose, is controlling—that George Doherty, who took and held the legal title, and George S. Doherty, who made the mortgage, was one and the same person, and was known to be so by the appellants when they obtained the instruments on which the judgments were entered under

which they claim priority of lien. The facts are undisputed, and the necessary deduction from them is that the appellants, well knowing that the actual owner of the land had, by the name of George S. Doherty, executed a mortgage, which was recorded in due time, undertook to defeat or postpone it by entering confessed judgments against the same person under the name of George Doherty. They had previously taken, for the same debts, judgments d. s. b. against him as George S. Doherty. It is manifest, therefore, that they themselves understood that to be his name, and were aware that the person so named was the owner of the property to whom the title had been conveyed by the name of George Doherty. Under such circumstances, the demand that these judgments should be preferred to the prior mortgage, by reason merely of the alleged more correct designation of the debtor in the former, is as devoid of legal support as it is of intrinsic merit. The opinion filed in the circuit court adequately discusses the case, and we concur in the conclusion which was there reached. Its decree is therefore affirmed.

DUNDEE MORTGAGE & TRUST INVESTMENT CO. v. HUGHES.

(Circuit Court, D. Oregon. December 23, 1896.)

Nos. 991, 1,198.

CORPORATIONS—DISSOLUTION—ABATEMENT OF SUITS.

Under the statute of Oregon (Hill's Ann. Laws, § 3233), providing that corporations, after their dissolution, shall continue to exist for five years, for the purpose of prosecuting or defending suits, etc., a corporation, at the expiration of such five years, becomes absolutely defunct, and a suit, commenced by it before its dissolution, abates.

J. W. Whalley and L. L. McArthur, for plaintiff.
Ellis G. Hughes, in pro. per.

GILBERT, Circuit Judge. The issues in this case were made, and the case was ready for trial, in the year 1886. On May 6, 1896, the defendant obtained leave to file an amended answer. Instead of filing an amended answer, he filed, under the name of an amended answer, a supplemental answer, in the nature of a plea in abatement, alleging that in the year 1889 the plaintiff was duly and regularly wound up, dissolved, and discontinued its corporate existence, and lost its corporate powers, further or otherwise than might be necessary to wind up its affairs, and that, at the present date, the said corporation has no legal existence. The plaintiff thereupon moved to strike the so-called amended answer from the files, for the reason that it is not an answer to the merits of the controversy, and is not an amended answer such as was contemplated in the order permitting it to be filed.

There can be no doubt that, without the permission of the court, the defendant had the right to file this plea, which has the effect of a plea of nul tiel corporation, alleging matters occurring after the commencement of the action, and that he could do so whenever the