

ered and ordered that the proceedings in this court for removal be dismissed, with costs to be taxed against the petitioner, the defendant in this case.

BAKER v. AULT et al.

(Circuit Court, D. Washington, N. D. February 5, 1897.)

FEDERAL COURTS — INJUNCTION AGAINST PROCEEDINGS IN STATE COURT — INSOLVENT NATIONAL BANKS.

When a valid judgment has been obtained in a state court against a national bank, and the lien thereof has attached to its property, before the appointment of a receiver, Rev. St. § 720, applies to prohibit the issue of an injunction by a federal court, at the suit of the receiver, to restrain the enforcement of such judgment.

Stratton, Lewis & Gilman, for complainant.

F. M. Headlee, for defendants.

HANFORD, District Judge. This is a suit for an injunction to restrain the defendants from proceeding to obtain satisfaction of a judgment in their favor against an insolvent national bank by a sale of real estate under a writ of execution. The judgment was rendered by the superior court of the state of Washington for Snohomish county, and became a lien upon real estate owned by the bank situated in said county, prior to the closing of the bank. The plaintiff, as receiver of said bank, claims the land as part of the assets in his custody as receiver, and that there will be a loss to the trust estate if the defendants are permitted to sell the property under an execution. Section 720, Revised Statutes of the United States, provides that:

"The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

This is a mandatory law, prohibiting the exercise by the federal courts of the power to issue injunctions to stay proceedings in any court of a state except in special cases, when authorized by some other law. I find it unnecessary to consider the other questions argued by counsel, for the reason that this statute is applicable to this case, and it must control the decision. Where a judgment has been obtained by fraud, or rendered by a court having no jurisdiction, a United States circuit court may exercise its power to restrain a party from taking any benefit from a judgment so obtained, or rendered in his favor. *Marshall v. Holmes*, 141 U. S. 589-601, 12 Sup. Ct. 62. But in the case at bar the validity of the judgment is not brought into question, and it is admitted that a judgment lien attached to the property before the receiver was appointed. I can find no ground for excepting this case from the rule prescribed by the statute. If the receiver wishes to save the property from being sacrificed by an execution sale, he must discharge the lien by satisfying the judgment, or else apply to the court which rendered the judgment to stay proceedings. Let there be a decree of dismissal, with costs.

BLANKS et al. v. KLEIN et al.

STARCKE et al. v. KLEIN et al.

(Circuit Court of Appeals, Fifth Circuit. December 1, 1896.)

No. 464.

APPEALABLE DECREES—DECREE FOR COSTS.

An appeal from a mere decree for costs of the court below must be dismissed, as a matter within that court's discretion. But, where one item included in the decree is for clerk's fees in making and certifying the transcript on a former appeal, the appellate court may review the same on the merits.

Appeal from the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

Wade R. Young, for appellants.

M. Dabney, for appellees.

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

PARDEE, Circuit Judge. This appeal is from a decree of the circuit court taxing costs in two equity causes which were decided in the circuit court July 16, 1891. Both causes were afterwards appealed to this court, where *Blanks v. Klein* was affirmed (3 C. C. A. 585, 53 Fed. 436), and *Starcke v. Klein* was dismissed for failure to file the record within the proper delay (14 C. C. A. 672). The contested items of costs, with one exception, are costs incurred in the circuit court in the trial of the causes, and were approved by the judge who rendered the decrees, apparently in compliance with section 983, Rev. St. U. S. The proceeding in which the decree under consideration was rendered appears to have been provoked by a motion of the appellants to retax costs. Proceeding under this motion, the court, on the application of movers, referred the matter to a special master, with directions to tax the costs of said suits due by movers, and to make report to the judge of the court in vacation. The special master made an investigation, hearing evidence of several parties by way of deposition, and reported that the items complained of were properly and lawfully taxed. Exceptions were filed to this report, complaining of the special master's findings both of fact and of law. The decree of the court overruled the exceptions to the master's report, confirmed the same in all respects, and declared as follows:

"And it is further considered by the court that inasmuch as nothing is involved in said motion and report except costs in said causes, and that both of said causes have heretofore been appealed to the court of appeals, and said appeals finally disposed of in that court, no appeal lies from this decree."

It seems to be settled that no appeal will lie from a mere decree for costs. *Clarke v. Warehouse Co.*, 10 C. C. A. 387, 393, 62 Fed. 328; *Du Bois v. Kirk*, 158 U. S. 58, 67, 15 Sup. Ct. 729. If this case covered only the costs incurred in the circuit court in an equity cause, which costs are unquestionably within the sound discretion of the court (*Canter v. Insurance Co.*, 3 Pet. 307; *Kittredge v. Race*, 92