

to the partnership, and to report to this court any offer which he may obtain therefor; and this court will, after proper notice to the other party and the opportunity to him to be heard, proceed to pass upon the propriety of accepting or rejecting any such offer as may be so obtained, and as to the temporary and final disposition of the proceeds of sale. And forasmuch as it does not certainly appear from the proceedings what, if any, advances have been made by the plaintiff to or for account of the late co-partnership of Ries & Henderson, as charged in the bill of complaint, it is further adjudged, ordered, and decreed that testimony be taken by the parties before one of the standing commissioners of this court to ascertain what moneys, if any, have been so advanced by the plaintiff; and, upon the coming in of said testimony, the court will proceed to finally decree as to the repayment and reimbursement to the plaintiff of such of the said advances as may be proper, and as to the manner in which his lien therefor, if any, upon the partnership assets, may be made effective and be worked out, and also as to the distribution of the firm assets between the parties. And, forasmuch as it is represented to the court by the defendant that it is necessary that certain appeals or legal proceedings be at once taken for the protection of the patent rights of the said firm, it is now further ordered that either party may advance the amount requisite to defray the expenses thereof, without prejudice, however, to either party, and with liberty to both parties, to be heard by this court as to the legal effect of such payment, and to it to decree hereafter as to whether the same has been properly incurred for account of the firm or for either party to this case, and as to the proper charge to be made therefor. And it is further adjudged, ordered, and decreed that the payment of the costs of this suit abide the further and final decree of this court, and that the plaintiff's application for the appointment of a receiver of the firm assets stand over until said final decree or the further order of this court.

From the foregoing decree an appeal was taken by the defendant on December 12, 1896. The complainant has now moved to dismiss the appeal, on the grounds (1) that, so far as it is an appeal from a decree granting a preliminary injunction, it was taken too late; and (2) that, as to the rest of the decree, the same was not final, and the appeal would therefore not lie.

John P. Poe and Arthur Stewart, for appellant.
Schmucker & Whitelock, for appellee.

Before GOFF and SIMONTON, Circuit Judges, and BRAWLEY, District Judge.

GOFF, Circuit Judge. This cause having been called for hearing upon the motion of the appellee to dismiss the appeal, and counsel for the respective parties having been heard in argument, and the court being of opinion that the decree of the lower court is not a final decree, from which an appeal will lie at this stage of the cause to this court to review the same, it is now here ordered, adjudged, and decreed by this court, this 13th day of February, 1897, that the appeal of Elias E. Ries be, and the same is hereby, dismissed, without prejudice to the rights of either party in the court below, and that the said Elias E. Ries do pay the costs in this court. Let the mandate issue forthwith.

LAKE NAT. BANK v. WOLFEBOROUGH SAV. BANK et al.

(Circuit Court of Appeals, First Circuit. January 18, 1897.)

No. 176.

1. JURISDICTION OF CIRCUIT COURT OF APPEALS—INTERLOCUTORY DECREE FOR INJUNCTION.

In a case in which a final decree would be appealable to the circuit court of appeals under sections 5 and 6 of the act of March 3, 1891, an appeal will lie to that court, under section 7, from an interlocutory decree granting an injunction, even though such appeal raises only the question of the lower court's jurisdiction.

2. SAME—APPEALABLE INTERLOCUTORY DECREE—INCIDENTAL INJUNCTION.

In a decree which appoints a receiver for a corporation, orders its officers to deliver the property into the receiver's hands, and enjoins them from interfering further with it, the injunction, while incidental to the appointment of the receiver, is not merely nominal, but forms a substantial part of the decree, and is therefore appealable. Such an appeal, however, raises only the question whether, assuming the receiver to have been properly appointed, the injunction was improvidently granted.

3. JURISDICTION OF CIRCUIT COURTS—NATIONAL BANK RECEIVERSHIPS.

Under the provision in the judiciary act of 1887-88, that "the provisions of this section" shall not affect the jurisdiction of the circuit courts in cases for "winding up the affairs" of any national bank, the circuit courts have at least concurrent jurisdiction (whether exclusive or not is not decided) with the state courts in cases of that kind, without regard to the citizenship of the parties.

4. SAME—CONFLICT OF JURISDICTION—COMITY—APPOINTMENT OF RECEIVERS.

A state court appointed a receiver of a national bank, but he never obtained possession of its property. The original complainant discontinued, and the defendant filed a motion to dismiss, but no formal order of dismissal was entered. *Held*, that the pendency of the suit in that condition was no bar to a subsequent suit between the same parties in a federal court for the appointment of a receiver, etc.

Appeal from the Circuit Court of the United States for the District of New Hampshire.

Reuben E. Walker and Hollis R. Bailey, for appellant.

Heman W. Chaplin (John R. Poor, on brief), for appellees.

Before COLT and PUTNAM, Circuit Judges, and NELSON, District Judge.

COLT, Circuit Judge. This is an appeal from an interlocutory decree appointing a receiver, and granting or continuing an injunction. The appellees (complainants below) have filed a motion to dismiss the appeal upon the ground that this court has no jurisdiction. In support of this motion, it is urged that in the assignment of errors the appellant raises only the question of the jurisdiction of the circuit court, and that under the act of March 3, 1891 (26 Stat. 826), this court cannot entertain an appeal which presents solely this question. Section 5 of the act declares:

"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 in which the jurisdiction of the court is in issue; in such cases the question of jurisdiction alone shall be certified to the supreme court from the court below for decision."