

Spring Hill Railway Company acquired said property, there was a mortgage on it, executed on June 1, 1886, by the Mobile & Spring Hill Railroad Company to M. P. Levy and F. Ingate, which was in full force and effect. On April 1, 1893, the Mobile & Spring Hill Railway Company executed a deed of trust on the railroad, franchises, and rights aforesaid to the complainant, the Mercantile Trust Company, as trustee, to secure certain bonds therein mentioned, which deed of trust, however, did not cover the lands in question. Subsequently the Mercantile Trust Company was subrogated to and acquired all the rights and remedies of said Levy and Ingate under the mortgage of June 1, 1886, which mortgage, it will be observed, included said lands. On June 11, 1895, a decree was rendered in this court foreclosing said mortgage, and ordering the property described therein to be sold to pay the debt secured by it. The amount of the debt then due was \$9,666.55. The Mercantile Trust Company was ordered to sell the property, and it was sold at public outcry on April 20, 1896. The deed of trust executed by the Mobile & Spring Hill Railway Company on April 1, 1893, was foreclosed by a decree of this court of February 29, 1896, and the property covered by said deed of trust ordered to be sold by Richard Jones, special commissioner, appointed for that purpose. The sale under this decree was also on April 20, 1896. The sale under the two decrees took place at the same time and place. They were made by one T. M. Le Baron, acting as crier for the Mercantile Trust Company, and for said Richard Jones, and all the property covered by the Levy and Ingate mortgage and by the said deed of trust was purchased by Lewis H. Rust for the sum of \$85,000, of which \$73,950 were paid to said Jones as commissioner, and by him paid into the registry of the court, and the balance of the purchase money, to wit, \$11,050, was paid to the Mercantile Trust Company, and by it applied to the satisfaction of the debt due to it under the Levy and Ingate mortgage, and by the company reported to the court. The court took no action with this division of the purchase money, and was not requested to take any action in the matter. On the reports of Commissioner Jones and of the Mercantile Trust Company, proper deeds were ordered by the court to be executed to the purchaser. At the time and place of sale, the petitioner, claiming to be the owner of the equity of redemption of the Mobile & Spring Hill Railway Company in and to the lands in question, tendered to the solicitors of the Mercantile Trust Company \$10,000 in cash in payment of "all the rights, privileges, franchises, and land granted to the Mobile & Spring Hill Railway Company, and described in the advertisement of sale," exclusive of the particular lands purchased by the petitioner at the sheriff's sale aforesaid, and demanded that said Mercantile Trust Company sell the property included in the Levy and Ingate mortgage, exclusive of the lands in question, and before selling said lands, and that said lands be sold separately, which demand was refused or disregarded. The petitioner now prays the court to decree that so much of the said \$73,950 be paid to it as equitably belongs to it as the owner of the Mobile & Spring Hill Railway Company's interest in said lands up-

on its making a conveyance of the same to the purchaser at the sale under the aforesaid decrees, and prays that it may be ascertained what sum petitioner is so equitably entitled to. The question is, what is the Mobile & Spring Hill Railway Company's interest in said lands? It was once the owner of the lands by purchase, but held them subject to a mortgage. In other words, it acquired by purchase the interest of the Mobile & Spring Hill Railroad Company. At most, that interest was but the equity of redemption, the grantor (Mobile & Spring Hill Railroad Company) having already executed the mortgage to Levy and Ingate. That mortgage has been foreclosed, and the property sold. The Mobile & Spring Hill Railway Company could have paid off the debt secured by the mortgage, and obtained a clear title to the lands. But it did not do so. It was not the mortgagor of the lands; and if it ever had the right, as a vendee of the mortgagor, to redeem, it had no such right on September 11, 1895, the day the petitioner purchased the lands at sheriff's sale. The mortgage had been foreclosed by the decree of this court three months prior to that time, and by the terms of the decree the equity of redemption was forever barred 30 days after the date of the decree. The Mobile & Spring Hill Railroad Company was barred by this decree, and the Mobile & Spring Hill Railway Company had no greater rights than the former company, and certainly the petitioner had no rights superior to the latter company. *Childress v. Monette*, 54 Ala. 317. So it seems to me clear that the Mobile & Spring Hill Railway Company has no interest in said lands, nor in the proceeds of their sale, even if they were now in the custody or under the control of the court, to which the petitioner is or can be equitably entitled, and there was no such interest at the time of the alleged tender and demand. If the Mobile & Spring Hill Railway Company had a right, as vendee, to redeem from the mortgagee of the Mobile & Spring Hill Railroad Company, where does the judgment creditor of such vendee get that right? The mortgagor or his judgment creditor can redeem, but I know of no authority for the judgment creditor of a vendee to redeem from the mortgagee of the vendor. *Kelly v. Longshore*, 78 Ala. 203. But if the petitioner, as the judgment creditor of the Mobile & Spring Hill Railway Company, had the right to redeem from the mortgagee of the Mobile & Spring Hill Railroad Company, it did not comply with the law of the tender. The amount alleged to have been tendered was \$10,000. The amount of the principal and interest due on the mortgage, without costs, was some \$10,300. So there was no legal tender. However, this is not a bill to redeem. It is a petition that the petitioner be paid such an amount as equitably belongs to it as the owner of the Mobile & Spring Hill Railway Company's interest in said lands. As I have said, I think it is clear that that company has no interest in said lands. In no aspect of the case, as now presented, can the court grant the relief prayed for. The demurrers to the petition are therefore overruled.

UNION STOCK YARDS NAT. BANK v. MOORE et al.

(Circuit Court of Appeals, Eighth Circuit. March 1, 1897.)

1. PARTIES.

To a suit brought against a bank to recover money deposited with it by a corporation, which plaintiffs claimed acted as their agent in making the deposit, and which deposit the bank had applied to the payment of a debt to it from the depositor, the corporation making the deposit was a proper, and even necessary, party; but as, on the rendition of the decree in favor of complainants, that company appeared entitled to no right or relief, and was not subjected to any liability, a dismissal as to it was proper.

2. BANKS—DEPOSIT BY AGENT.

Where the officers of a bank, when they received a deposit which they applied to the payment of a debt due from the depositor to the bank, knew or had reason to believe that the deposit contained moneys belonging to others, for whom the depositor was but the agent or factor, the persons who were in equity the owners of the money were entitled to recover it from the bank.

Appeal from the Circuit Court of the United States for the District of Nebraska.

The appellant is a national bank doing business at the Union Stock Yards at South Omaha, Neb.; and in the year 1895, and prior thereto, the Waggoner-Birney Company was a corporation of the same place, engaged in business as a live-stock commission agent and factor, doing all of its banking business with the appellant, and at the close of business on the 1st day of August, 1895, was indebted to the appellant, upon overdrafts and its checks paid by the appellant, in the sum of \$8,918.10, and upon its two promissory notes, having then considerable time to run before maturity, in the further sum of \$8,774.39. On said 1st day of August, 1895, the appellees brought by railroad to South Omaha a large shipment of cattle, and gave them, for sale upon commission, to the Waggoner-Birney Company aforesaid, who made sale of the cattle on the same day, and, near the close of business of that day, deposited the proceeds of such sale, with some other moneys, in the appellant bank; the entire amount of the deposit being the sum of \$17,666.30. On the receipt of such deposit by the appellant, it assumed to apply the same, as moneys of said Waggoner-Birney Company, in payment and satisfaction of all said indebtedness of said company to said bank, including the said two notes of said company not matured; and on the morning of August 2, 1895, upon the presentation of the check of said company upon said bank for the sum of \$11,773.03, to be paid to the appellees as the net amount belonging to them from the proceeds of the sale of their cattle, all of which proceeds had been included in said deposit of the preceding day, said bank refused to pay the same or any part thereof, and claimed to hold all of said money under said application by it of the same in satisfaction of said indebtedness of the said company to said bank. Whereupon this suit was begun by the appellees, and upon trial thereof the court made the decree in their favor which is appealed from.

J. M. Woolworth (J. L. Kennedy and Myron L. Learned on the brief), for appellant.

C. J. Smyth, for appellees.

Before SANBORN and THAYER, Circuit Judges, and LOCHREN, District Judge.

LOCHREN, District Judge, after stating the case as above, delivered the opinion of the court.

1. Although the Waggoner-Birney Company, from its connection with, and possibility of interest in, the subject of the litigation, was a