can, as such receiver, maintain an action in this court. The general rule is, undoubtedly, that a receiver appointed by a court has no extraterritorial jurisdiction. Booth v. Clark, 17 How. 322. But we think there is a well-established exception to this general rule, and the inquiry here is whether the allegations of this bill are sufficient to bring it within that exception. It appears from the allegations of the bill that the New South National Building & Loan Association was a corporation organized under the laws of the state of Tennessee, and that in a suit in the chancery court of Claiborne county, Tenn., the complainant was appointed and qualified as receiver of all the property, business, and assets of said corporation, and that the defendants were shareholders in said company; that a suit was brought by R. N. Nesterson and others against C. E. Boyden and others in said chancery court, and the proceeding was to declare the corporation insolvent and put it into liquidation. It is also alleged in the bill that said chancery court had jurisdiction of the subject-matter and the parties in said cause; that it had jurisdiction of said corporation and of all of its shareholders, whether formally made parties thereto or not; and that said proceedings were sustained and a decree rendered in March, 1892, adjudging said corporation insolvent, and its affairs were directed to be wound up, to the end that its assets might be distributed first in the payment of its debts, and whatever remained to be distributed pro rata among its shareholders; and the complainant, Rogers, was appointed receiver, and was fully authorized and directed to execute said decrees, and to bring any and all suits necessary to be brought for the collection of the assets of said corporation. It is alleged that Riley was and is a shareholder in said corporation. It is also alleged that all of the debts of said association have been paid. These allegations being taken for true, we think that the present proceeding is within the exception to the general rule which limits the powers of a receiver to the jurisdiction of the court appointing him. This because of the comity between the states of the Union, which will allow the maintenance of a suit by a receiver appointed by a court of another state, where there are no domestic creditors, and where it is not against the public policy of the state in which the suit is brought. 2 Beach, Mod. Eq. Prac. § 727; Hurd v. Elizabeth, 41 N. J. Law, 1; Metzner v. Bauer, 98 Ind. 427; 20 Am. & Eng. Enc. Law, 242, and cases cited. I had occasion in a case pending in this court to examine the record of the suit of Nesterson v. Boyden in the chancery court of Claiborne county, and have there maintained the right of Receiver Rogers to maintain an action like this one.

2. It is insisted that as the note sued on is only for $2,000, and as there are some payments which are allowed as credits in the bill, the amount in controversy does not exceed $2,000, exclusive of costs and interest, and that, therefore, this court has not jurisdiction. It is true, from an examination of the bill, and a calculation of the credits given for payments which are stated in the bill, that the amount sued on the note is a little over $1,900. But the bill avers that the contract sued on is a Tennessee contract, and that, by the laws of the state of Tennessee, valid and binding contracts can be entered into between the debtor and the creditor, whereby a debtor agrees

to pay a reasonable attorney's fee to the creditor or his attorney in the event the debt is sued for, and this contract may be made either in the note executed for the debt, or the mortgage to secure the same. It is alleged that the defendant contracted and agreed that if the mortgage indebtedness, or any part thereof, should be collected by or under legal or equitable proceedings, the mortgagor should pay the expense of the collecting, including a reasonable attorney's fee to the mortgagee, and that the lien of the mortgage should extend to and include all such expenses, and that the same should be included in any judgment awarded for the enforcement of said debt, and for the sale of the mortgaged premises. The obligation of the mortgage is in these words:

"Should the said indebtedness, or any part thereof, secured by this mortgage, be collected by or under legal or equitable proceedings, said first party shall pay all expenses of collection, including reasonable attorney's fees; and it is agreed that the lien of this mortgage shall extend and include all such expenses, and the same shall be included in any judgment awarded for the enforcement of said debt, or for a sale of the mortgaged premises."

And it is alleged in the bill that 10 per cent. on the amount sued by the mortgagee would be a reasonable attorney's fee in the case, and the prayer of the bill is that a sale of said property be made to pay said mortgage debt, together with 10 per cent. thereon, as complainant's attorney's fee. The act of 1887–88 gives this court "concurrent jurisdiction with the several courts of suits of a civil nature at common law and equity, where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of $2,000"; and the inquiry here is whether or not this attorney's fee which is thus contracted for in this mortgage is to be considered as costs, within the meaning of the act, or should it be calculated as a liability, in estimating the amount in controversy? The acts of congress allow an attorney's fee, which in a case like this is $20, and provide, also, that the fees of the clerk, marshal, and attorney shall be taxed by the judge or the clerk of the court, and be included in, and recorded as part of, the judgment or decree against the losing party. See Rev. St. §§ 824, 983. This, being a contractual obligation to pay the association a reasonable attorney's fee, is not, we think, in any sense, costs, as mentioned in the act of 1887–88, but is a liability which should be included in estimating the amount in controversy. It is true that in this provision of the contract the attorney's fee is considered as an expense of collection of the mortgage debt, and it might be argued therefrom that it is not an existing liability as of the date of the bringing of the suit, since it was to be an expense of collection; but, construing the entire contract, it is quite clear that the liability for the attorney's fee exists at the time of the institution of either a legal or equitable proceeding, and the fee, when ascertained, is to be included in the judgment for the debt and for the sale of the mortgaged premises. In the case of Baker v. Howell, 44 Fed. 114, Judge Caldwell had occasion to consider whether or not the notary's fee of $3.50 for the protest of a note for the nonpayment of $2,000 might be added as part of the amount in dispute, so as to give the requisite amount for jurisdiction of his court. He there held—and properly,

we think—that the notary's fee was part of the costs which would be taxed under the general law as costs of the proceeding, and it was therefore not to be included in making the jurisdictional amount to give the court jurisdiction. He there clearly draws the distinction between that which would be included as costs under the statute and the general practice, and that which would be based solely on the contract of the parties litigant. Here the allegation is made that this contract is valid by the laws of the state of Tennessee, and that the contract, being valid in the state of Tennessee, should be enforced in this court. It is distinctly alleged that a reasonable attorney's fee is at least 10 per cent. of the amount due, which, if added—and we think it should be—to the amount due on the mortgage note, would make more than the jurisdictional amount of $2,000.

We have not overlooked the case of Dodge v. Tulleys, 144 U. S. 451, 12 Sup. Ct. 728, in which the supreme court indicates that, in a deed of trust which is sought to be enforced, an equity court might adjudge to the trustee a reasonable attorney's fee as part of the expense of executing the trust, and have it taxed against the trust property, notwithstanding the statute of the state in which the foreclosure proceedings were pending prohibited the allowance of such fees. This is because the state statutes cannot control the equity practice in the federal courts. But this opinion has no application to the present inquiry, since it is quite clear that a reasonable attorney's fee, if allowed at all, must be because of the contract of the defendants in the mortgage, and could not be allowed as costs either by this court, or a state court of Tennessee or of this state. We therefore conclude the demurrer should be overruled, and it is so ordered, and the defendants are given 20 days within which to file their answer.

UNITED STATES SAVINGS, LOAN & BUILDING CO. v. SULLIVAN et al.

(Circuit Court, D. Kentucky. September 12, 1896.)

SAVINGS AND LOAN ASSOCIATIONS—LOANS AND MORTGAGES—DEFAULT—WITHDRAWAL VALUE OF SHARES.

Defendant made a mortgage to a savings and loan company to secure a loan made upon 40 shares of the stock of the company. The note given for the loan provided that, if the borrower failed to make any monthly payment on said stock, or to pay any installment of interest for a period of three months after it was due, then the whole amount of the note should become due and payable; and the mortgage provided that in the like case the principal sum and interest should, at the election of the mortgagee, become thereupon immediately due and payable upon such default. *Held*, that upon the occurrence of a default in the payment of the monthly dues on the stock an election to declare the debt matured, whenever actually made, must be as of the date of three months after such default, and the amount due on the stock and the withdrawal value of the shares must be calculated as of said date.

Buckner & Jouett, for complainant.
D. W. Lindsey and Dodd & Dodd, for defendants.

BARR, District Judge. This case comes to me upon a demurrer to the bill, and the ground of the demurrer is that the amount in controversy does not exceed $2,000, exclusive of interest and costs,

so as to give this court jurisdiction. The bill is for the foreclosure of a mortgage for a note dated March 28, 1890, for the sum of $2,000, bearing interest at the rate of 6 per cent. per annum, interest payable monthly. The following is a part of the note:

"It is understood that this note is given for a loan obtained on 40 shares of stock of said United States Savings Loan & Building Company, and, if the maker hereof fails to make any monthly payment on said stock, or to pay any installment of interest for a period of three months after the same is due, then the whole amount of this note shall become due and payable. But if the maker hereof shall pay all installments of interest which become due hereon, and all monthly payments and fines which become due on said stock until said monthly payments shall have been past due for a period of six months, then, upon the surrender of said stock to said company, this note shall be deemed to be fully paid and canceled. This note is understood to be made with reference to and under the laws of the state of Minnesota."

The mortgage is executed upon real estate in Kentucky, in which it is provided that:

"If the said party of the first part [the mortgagor], his heirs, executors, administrators, or assigns, shall well and truly pay or cause to be paid to the said party of the second part, its successors or assigns, at the office of the treasurer at St. Paul, Minnesota, or at the office of its trustee, Minneapolis, Minnesota, $2,000 and interest, according to the conditions of one promissory note executed by Charles B. Sullivan [the mortgagor], said party of the first part, to said party of the second part, bearing even date herewith, payable after three years from date and before nine years from date, with interest on $2,000 before and after maturity at the rate of six per cent. per annum until paid, interest payable monthly, or shall pay or cause to be paid to the treasurer of said company all installments of interest which become due on said note, and all fines and monthly payments which become due on said stock until said stock becomes fully paid in, and of the value of $100 per share, and before any of said installments of interest or monthly payments shall have been past due for a period of six months, and shall then surrender said stock to said company in payment of said note, then this deed shall be null and void; otherwise to remain in full force and effect. But, if default be made in the payment of said sum or sums of money, or of any installment of interest thereon, or of any monthly payment on said stock for a period of three months after the same shall be due, or any part of either, or in effecting the insurance or in paying the taxes or assessments at the time or times hereinbefore specified for the payment thereof, or in any condition in this mortgage contained, then, and in either or any such case, the whole principal sum or sums secured by this mortgage, and the interest thereon accrued up to the time of such default, shall, at the election of said second party, its successors or assigns, or its or their agent, become thereupon due and payable immediately upon said default; and the said party of the first part doth hereby authorize and empower the said party of the second part, its successors or assigns, the owner hereof, its agent and attorney, at its or their election, and without notice of such election, to foreclose at once this mortgage for the whole of said principal sum or sums and accrued interest and money paid for taxes, assessments, and insurance, as herein provided, or to foreclose for such sum or sums and interest and money paid as may be due and payable by the terms of said note hereby secured; and to sell the hereby said premises at public auction, and convey the same to the purchaser in fee simple, agreeably to the statutes in such case made and provided; and out of the money arising from such sale to retain the principal and interest and fines then accrued on the sum or sums so elected to be foreclosed for, together with any insurance, assessments, or taxes paid as above stipulated, and all costs and charges of such foreclosure, including seventy-five dollars ($75) attorney's fees for foreclosing this mortgage, and pay the overplus, if any, to the said party of the first part, his heirs, executors, administrators, and assigns."

There are two certificates, each for 20 shares of stock. Certificate No. 22,121 is assigned absolutely to the complainant as a pre-

mium for the loan granted to the defendant, and certificate No. 4,382 for 20 shares is assigned as collateral security for said loan. There is a provision in each of the certificates that the shareholder agrees to pay 60 cents monthly on each share until said share matures or is withdrawn, and this monthly installment is due and must be paid on the second Tuesday of each month. Fifty-three cents of each monthly payment on each share and all fines shall be paid by the treasurer to the trustee on account of the loan fund, and the other seven cents of each installment shall go to the expenses. There is also a provision that there should be a fine of 10 cents due and payable on each share, if not paid when due, and a fine of 15 cents on each share for each subsequent monthly default.

The bill alleges that the contract between the parties was intended to be and is governed by the laws of Minnesota, and that by the Minnesota law any premium for a loan is not to be considered as usury, nor to be counted as interest. It appears from the allegations of the bill and the exhibits that the complainant has agreed to pay more than $75 for this foreclosure of the mortgage, and he claims a lien therefor. It also appears that by a resolution of complainant's board, not dated, but alleged to have been on the ——— day of April, 1895, this debt was declared matured, defaulted interest as alleged being then payable for a period of 28 months; and directed the principal of said note and mortgage which was in default to be foreclosed, and that the stock which had been assigned to the company as collateral for the repayment of said loan be canceled, as provided in the by-laws of said company, and credit be given of such amount as would appear to be the withdrawal value of such stock after cancellation of same.

The accounts filed for the payment of interest on said note show that the monthly installments were paid, with the exception of one of the months, up to April, 1893, the last payment being $60, made December 3, 1892. It also shows that there was paid on certificate of stock No. 4,382, $492.34, the last payment being made December 3, 1892, and the amount $84.34; and on certificate No. 22,121 the installments paid amounted to $456, the last payment being on the 3d of December, 1892, for $72. The total is rendered thus:

Amount of loan		$2,000 00
Ctf. 4,382,	stock	323 66
" "	fines	80 00
" 22,121,	premium	336 00
" "	fines	83 00
" "	interest	280 00
		$3,102 66
Less book value Ctf. 4,382, 20 shrs		979 60
		$2,123 06

In this statement there is a balance claimed of $2,153.06,—more than enough to give this court jurisdiction. But in this account the installments of dues as charged do not stop with the month of April, 1893, but run down to and include the month of September, 1895, on both the certificates of stock, thus including five monthly