

that a trespass upon such premises involves a question arising out of or under any law of the United States. As well might it be contended that a case between individuals relating to the possession of government securities is a case arising under the laws of the United States, because a description of the property would involve a judicial knowledge of the origin, validity, and value of the obligation under the legislation of the national government. This is certainly not the interpretation intended by the removal act. The case of *Consolidated Wyoming Gold-Min. Co. v. Champion Min. Co.*, 62 Fed. 945, involved the precise question we have here, but the motion to remand in that case was based upon the defendant's petition. The decision, denying the motion, was rendered by Judge McKenna on March 6, 1893. At that time the supreme court had not decided the case of *Tennessee v. Union & Planters' Bank*, 152 U. S. 454, 14 Sup. Ct. 654, holding that the question of federal jurisdiction must be determined upon the complainant's statement of his own claim, and not upon the defendant's petition. The statement of Judge McKenna, in the first-named case, that "a contest between mining claims necessarily involves a consideration of the laws of the United States," must be considered with respect to the issues of that case, and the question of jurisdiction as it then stood. In *Hanford v. Davies*, 163 U. S. 273, 16 Sup. Ct. 1051, Mr. Justice Harlan, speaking for the supreme court, stated the law upon this subject very clearly. He said:

"We are not required to say that it is essential to the maintenance of the jurisdiction of the circuit court of such a suit that the pleadings should refer, in words, to the particular clause of the constitution relied on to sustain the claim of immunity in question, but only that the essential facts averred must show, not by inference or argumentatively, but clearly and distinctly, that the suit is one of which the circuit court is entitled to take cognizance,"—citing *Ansbro v. U. S.*, 159 U. S. 695, 16 Sup. Ct. 187.

As it does not appear clearly and distinctly that this case arises under the laws of the United States, the motion to remand must be granted, and it is so ordered.

GARNER et al. v. SOUTHERN MUT. BUILDING & LOAN ASS'N.

(Circuit Court of Appeals, Fifth Circuit. June 10, 1897.)

No. 588.

FEDERAL AND STATE COURTS—CONFLICT OF JURISDICTION—APPOINTMENT OF RECEIVERS.

A federal court will not appoint a receiver for a corporation when it appears that a state court of competent jurisdiction has already appointed a receiver therefor, who has taken possession of all its assets.

Appeal from the Circuit Court of the United States for the Northern District of Georgia.

This was a bill in equity by Charles E. Garner, a citizen of Florida, suing in behalf of himself and all other stockholders and creditors, against the Southern Mutual Building & Loan Association, a corporation organized under the laws of Georgia, and others. The bill was in the nature of a creditors' bill, and set

forth that the defendant company was insolvent, and prayed for the appointment of a receiver to take charge of all the corporate property, books, etc., and for the issuance of writs of injunction restraining the defendant, its officers, directors, agents, etc., from interfering further with its affairs. Thereafter the bill was amended by making William J. Speer, treasurer of the state of Georgia, a party defendant, and alleging that he had in his possession, as such treasurer, in compliance with the Georgia statutes, \$331,000 of the securities and assets of the defendant corporation. By this amendment it was sought to sequester the securities and assets in the hands of said Speer, to have a receiver appointed for the same, and the administration of the fund proceeded with by the court. On a rule to show cause why the injunction should not be granted, and a receiver appointed, as prayed for, the defendant association made a return, showing, among other things, that prior to the institution of this suit a creditors' suit had been brought by Roby Robinson and others against the defendant association, in the superior court of the state of Georgia, which suit was for the purpose of sequestering all the assets of the association, and for the general administration thereof, the payment of its debts, and the distribution of the remainder among its stockholders; that on February 5, 1897, a receiver was appointed in that suit, who qualified on the following day, and, three days before the institution of the present suit, took possession of all the assets of the association, so far as the same could be found, including possession of the key to the box in the office of the treasurer of Georgia, where the securities deposited with such treasurer were stored; that the key so taken possession of was the only key to said box; and that the receiver also notified the treasurer of his appointment, and of his right to control the securities, leaving the same voluntarily in the box in the treasurer's office. On this showing the circuit court entered an interlocutory order denying the application for an injunction, and refusing to appoint a receiver. From this decree the present appeal was taken.

Tompkins & Alston, for appellants.

Ellis & Gray and King & Spalding, for appellee.

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

PER CURIAM. Considering that the bill filed by Roby Robinson and others in the superior court of Fulton county, in the state of Georgia, on the 6th day of February, 1897, was a bill to liquidate and wind up the affairs of the Southern Mutual Building & Loan Association, and that upon the said bill the said court took jurisdiction, appointing a receiver, who was directed to take charge of all the moneys, properties, and assets of said corporation, and hold the same subject to the further order of the said court, we are of opinion that thereby, and prior to the filing of the bill by the present appellants in the circuit court of the United States for the Northern district of Georgia, all the assets, money, and properties of every description of the said Southern Mutual Building & Loan Association were taken into the custody and control of said state court, and placed beyond the jurisdiction of the circuit court of the United States for the Northern district of Georgia. It follows that the order appealed from, refusing an injunction on the application of appellants to restrain the treasurer of the state of Georgia from making certain disposition of the assets of the Southern Mutual Building & Loan Association in his possession and under his control, and refusing to appoint a receiver to take charge and administer said assets, was in all respects proper. The decree appealed from is affirmed, with costs.

VAL. BLATZ BREWING CO. v. WALSH et al.

(Circuit Court, D. Minnesota. December 23, 1897.)

FEDERAL COURTS—FORECLOSURE SUITS—RECEIVER FOR PROPERTY IN CUSTODY OF STATE COURT.

Where foreclosure proceedings are pending in a state court, to which a junior mortgagee is a party, and the mortgaged property is in the hands of an assignee in insolvency of the mortgagor, the assigned estate being under the direction and management of the same court, a federal court will not appoint a receiver to take charge of the property in a foreclosure suit instituted by the junior mortgagee.

This is a suit by the Val Blatz Brewing Company against Matthew Walsh, as assignee of Jacob Barge, and others, for the foreclosure of a mortgage. Heard on an application by complainant for a receiver pendente lite.

Merrick & Merrick, for complainant.

Henry J. Gjertsen, for defendant assignee.

LOCHREN, District Judge. This matter came before this court upon an application made by the complainant for the appointment of a receiver of the mortgaged property described in the bill of foreclosure pendente lite. The conceded facts in the case are, briefly stated, these: On the 14th day of August, 1896, the defendant Barge gave to the complainant a third mortgage upon the property in question, for the sum of \$18,423.10. At that time prior incumbrances existed on the tract in the sum of \$34,100. On the 18th day of October, 1897, the mortgagor defendant made an assignment of all his unexempt property to the defendant Matthew Walsh, as assignee, under the laws of the state of Minnesota, and the defendant Walsh immediately qualified, and took possession of the insolvent estate under said deed of assignment, and now is, and has ever since acted as, such assignee, under the direction and management of the state district court in and for Hennepin county. On the 13th of November, 1897, an application was made, in an action then pending before said district court for a foreclosure of the second mortgage, for the appointment of a receiver of the mortgaged premises. The complainant herein was a party defendant to said foreclosure suit, and appeared in open court, and advised the appointment of such receiver at the instance of the second mortgagee. The said state district court, however, denied said application. Thereafter, on the 27th of November, 1897, the second mortgagee, in the matter of the assignment proceedings, made an application requiring the assignee to pay the taxes, insurance, and interest due on the first mortgage out of the rentals of the mortgaged property, and to fix the rental value of the property occupied by the assignee; and thereafter, on the 21st day of December, 1897, said district court made an order granting the application, directing the assignee to pay all delinquent taxes, and the necessary insurance and repairs, and fixing the rental value of that part of the premises occupied by the assignee, and requiring him to keep separate account of the income and disbursements pertaining to such property. The remainder of the application was de-