

although the mistake might have been avoided if greater care had been taken to investigate and ascertain the facts regarding the transaction. U. S. v. Barlow, 132 U. S. 271-282, 10 Sup. Ct. 77.

This demurrer is also based in part upon the ground that there is a defect of parties defendant. It is insisted that the comptroller of the currency and treasurer of the United States are indispensable parties, for the reason that the \$3,050, paid by the complainant to the receiver has been placed in the treasury of the United States, and can only be repaid by the treasurer, under an order to be made by the comptroller of the currency, authorizing such repayment. It has not been usual to join these officers as parties defendant in actions of this nature, and, as they are not within the reach of process of this court, it is not practicable to bring them into the case so as to bind them by any judgment which the court can render. The receiver of an insolvent national bank is authorized to sue and defend actions for the purpose of collecting the assets, and for the adjudication of disputed claims against such bank. The court can only go so far as to render a declaratory judgment, establishing the rights of the respective parties. If the complainant obtains a judgment in his favor, the comptroller of the currency must make an order to pay it. It is not to be presumed that the officers of the government will refuse to pay, in whole or in part, any lawful judgment; but, if there should be an obstinate refusal on the part of the comptroller of the currency, or on the part of the treasurer of the United States, to pay a judgment out of the funds available for the purpose, the complainant must seek for vindication of his rights by an application to a court having jurisdiction at the place where said officers reside for coercive measures. But the possibility of having to work out satisfaction of a judgment with the assistance of a court of another jurisdiction forms no barrier to an adjudication of the rights of the parties within the jurisdiction of this court. If the suit were against the defendant in his capacity as an individual, and if he had no property subject to execution in this district, but did have ample means situated in another state, it could not be insisted that he would not be suable in this court, because the judgment could not be enforced by process of this court, nor could it be urged that persons in another state were necessary parties defendant, because they were in actual possession of the only property available to satisfy a judgment against the defendant. Demurrer overruled.

JENNES v. LANDES et al.

(Circuit Court, D. Washington, N. D. December 31, 1897.)

1. EQUITY PLEADING—SUFFICIENCY OF BILL—NECESSITY OF PRAYER FOR PROCESS.

A bill is not demurrable because it contains no prayer for process where the defendants who are required to answer are named both in the caption and body of the bill.

2. ALIENAGE—NECESSITY OF CONSENT OF GOVERNMENT RENOUNCED.

The consent of the United States is not necessary to enable a citizen to voluntarily expatriate himself, and become a citizen of another country.

8. JURISDICTION—ALLEGATION OF ALIENAGE—SUFFICIENCY.

Allegations in a bill against citizens of the state of Washington that complainant was by birth a citizen of that state, but by her marriage with a British subject, and removal to British Columbia, became a citizen of Great Britain, no law of that country making her a citizen by reason of such facts being pleaded, are insufficient to sustain the jurisdiction of the federal court on the ground of diversity of citizenship.

4. SAME—PLEADING STATUTE OF CANADA.

It will not be presumed, in the absence of a showing that there is a British law conferring it, that the Canadian parliament has power to naturalize a citizen of the United States, and make him a citizen of Great Britain; and the setting out in a bill of a Canadian statute, under which it is claimed the complainant, who is by birth a citizen of the United States, became a British subject, is insufficient to confer jurisdiction on the federal court on the ground that complainant is an alien.

This is a suit in equity, by Lutie Jennes, a married woman, against Henry Landes and others, for an accounting respecting certain property to which she claims ownership. The defendants have demurred to the bill on two grounds, viz.: The bill does not contain a prayer for process, nor designate the defendants who are required to answer, and the bill shows upon its face that the case is not within the jurisdiction of this court. Demurrer sustained.

W. F. Hays and Charles E. Shepard, for plaintiff.

A. R. Coleman and Richard Saxe Jones, for defendants.

HANFORD, District Judge. Both in the caption and in the body of the bill of complaint the defendants who are required to answer are named, and plainly designated. This being so, the bill is not demurrable, because there is no prayer for process.

The complainant was born in the state of Washington, and lived in the state of Washington until her marriage to a British subject, when she removed to, and became permanently domiciled in, British Columbia, and she is now an inhabitant of British Columbia; and in her bill of complaint alleges that by her change of domicile and marriage she has become and is a subject of the queen of Great Britain. The showing that complainant was by birth a citizen of the United States raises a question as to her alienage at the time of commencing this suit, and, as the jurisdiction of this court depends upon diversity of citizenship, it must be alleged positively, and facts must be proven sufficiently to satisfy the mind of the court beyond any question of legal doubt that she is an alien; otherwise the case must be dismissed for want of jurisdiction.

A change of allegiance from one government to another can only be effected by the voluntary action of the subject, complying fully with the conditions of naturalization laws, so that there is concurrent action and assent on the part of both the subject and the government to which the new allegiance attaches. Authorities entitled to great respect have been cited in the argument, holding that it is also necessary to have assent on the part of the government renounced. In my opinion, that rule no longer obtains in the United States, since congress, by the act of July 27, 1868, now re-enacted in section 1999, Rev. St., has expressly declared it to be the policy of our government that the right of expatriation is a natural and inherent right of all people,

indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness. The averment in the bill that the complainant has become a British subject is the statement of a mere legal conclusion, and, in view of the other facts alleged, it is very questionable whether it can be regarded as a sufficient allegation of a jurisdictional fact. It is also questionable whether, if the allegation should be traversed, the complainant would be permitted to sustain the issue on her part by introducing in evidence a British law, if there be one similar to our section 1994, adopting her as a British subject as a consequence of her marriage. Courts are not required to take judicial knowledge of foreign laws; therefore, if it should be necessary to prove the existence of such a law in this case, it should be pleaded. In his opinion in the case of *Pequignot v. City of Detroit*, 16 Fed. 211, Mr. Justice Brown stated that by the sixteenth section of 7 & 8 Vict. c. 66 (1844), it is enacted "that any woman married, or who shall be married, to a natural-born subject or a person naturalized, shall be deemed and taken to be herself naturalized, and have all the rights and privileges of a natural-born subject." If this statute, or any similar British law, is now in force, the complainant did become a British subject by her marriage, and is entitled to sue in this court; but, in my opinion, it is necessary to amend her bill by pleading the statute. Demurrer sustained.

Opinion on Demurrer to Amended Bill.

By her amended bill of complaint the complainant alleges, in addition to the matters set forth in her original bill, that by the laws of the dominion of Canada and the province of British Columbia relating to the subject of citizenship, allegiance, and naturalization of married women, "a married woman shall within Canada be deemed to be a subject of the state of which her husband is, for the time being, a subject," and that it is so provided by a statute enacted by the parliament of the dominion of Canada in the year 1885, the same being section 22 of chapter 113, volume 2 of the Revised Statutes of Canada of 1886. To this amended bill the defendants have also demurred on the ground that the alienage of the complainant, and her right to sue in this court, does not sufficiently appear. Whether the Canadian statute above quoted has the effect to confer upon women who are married to British subjects residing in Canada the rights, and subject them to the obligations, of subjects of the queen of Great Britain, depends partly upon the intent of the Canadian parliament in the enactment, and partly upon the constitution of that government. I will not, at this time, attempt an interpretation of the statute, for, as Canada is not an independent sovereignty, I do not feel justified in presuming, without a further showing, that its parliament has the power to naturalize citizens of the United States so as to complete their change of allegiance from the government of the United States to that of Great Britain. If there is any British law conferring such power upon the Canadian parliament, it should be pleaded, as any other foreign law upon which the rights of a litigant in this court depend. Demurrer sustained.

**ELKHART NAT. BANK OF ELKHART, IND., v. NORTHWESTERN
GUARANTY LOAN CO. OF MINNEAPOLIS, MINN., et al.**

(Circuit Court, E. D. Pennsylvania. December 10, 1897.)

No. 33.

1. PARTIES—WHO NECESSARY IN SUIT TO ENFORCE INDIVIDUAL LIABILITY OF STOCKHOLDERS.

To a bill by a creditor of a corporation averring its insolvency, and demanding the appointment of a receiver, an accounting, and the enforcement of the individual liability of the stockholders, the corporation is a necessary party defendant.

2. FEDERAL COURTS—JURISDICTION—SUIT TO ENFORCE INDIVIDUAL LIABILITY OF STOCKHOLDERS OF A FOREIGN CORPORATION.

Where the jurisdiction of the federal courts depends on the diverse citizenship of the parties, the federal courts of the residence of stockholders of an insolvent corporation, organized under the laws of another state, have no jurisdiction of a suit brought by a creditor of the corporation for an accounting and a receivership, and to enforce the individual liability of the stockholders, if the corporation has not voluntarily appeared in the action. In such case the nonresident corporation cannot be compelled to appear. *Smith v. Lyon*, 10 Sup. Ct. 303, 133 U. S. 315, and *Improvement Co. v. Gibney*, 16 Sup. Ct. 272, 160 U. S. 217, followed and applied.

3. SAME—PLEADING AND PRACTICE.

In such a case, the defendant stockholders who appear may set up this defense by demurrer.

This was a bill in equity by the Elkhart National Bank of Elkhart, Ind., which sued as a citizen of Indiana, against the Northwestern Guaranty Loan Company of Minneapolis, a corporation organized under the laws of Minnesota, and Edward P. Allison and others, stockholders in the Northwestern Guaranty Loan Company, and citizens of Pennsylvania. The Northwestern Guaranty Loan Company was not served with process, and did not appear. The other defendants appeared, and by demurrer denied the jurisdiction of the court. The pleadings are sufficiently set out in the opinion.

M. H. Boutelle, for complainant.

John G. Johnson and W. C. Rodman, for respondents.

DALLAS, Circuit Judge. This is a suit in equity brought by the Elkhart National Bank, a citizen of the state of Indiana, against the Northwestern Guaranty Loan Company, a citizen of the state of Minnesota, and the several other defendants named in the bill, all of whom are alleged to be citizens of the state of Pennsylvania, and residents of the Eastern district of that state. Manifestly, the objection made by these demurrers, that the Northwestern Guaranty Loan Company cannot be required to appear in this district, is supported by the ruling of the supreme court of the United States in *Smith v. Lyon*, 133 U. S. 315, 10 Sup. Ct. 303, which in the later case of *Improvement Co. v. Gibney*, 160 U. S. 217, 16 Sup. Ct. 272, is referred to as having decided that a suit in which there is more than one plaintiff or more than one defendant must be brought in the district in which all the plaintiffs or all the defendants are inhabitants. The Northwestern Guaranty Loan Company is a citizen and an inhabitant, not of this district, but of the state of Minnesota. It has not voluntarily ap-