

proper to permit a receiver of the court to participate in schemes of reorganization. Nor do we decide that the appellant has on the record an interest sufficient to warrant his appeal (but see *Central Trust Co. v. Grant Locomotive Works*, 135 U. S. 207, 222, 10 Sup. Ct. 736), nor that either the appeal or cross appeal was properly taken. The decree of the circuit court is affirmed.

OTTO v. REGINA MUSIC-BOX CO.

(Circuit Court, D. New Jersey. May 5, 1898.)

1. ADMINISTRATORS—APPOINTMENT—JURISDICTION—PLEADING.

One claiming title to a patent by assignment from an administrator of the former owner, appointed by the surrogate's court of the city and county of New York, which is a court of limited and inferior jurisdiction, must allege the facts upon which its jurisdiction to make the appointment was founded; and if the bill does not show whether the deceased died intestate, whether, at the time of his death, he was a resident of the city and county of New York, or whether he had any property there to be administered on, it is subject to demurrer.

2. SAME.

The mere averment that one was duly "appointed" administrator is not sufficient to show his authority as such, for his power arises only from the issuance of letters of administration to him.

This was a suit in equity by Gustav Otto against the Regina Music-Box Company. The cause was heard on demurrer to the bill.

Antonio Knauth, for complainant.

W. Laird Goldsborough, for defendant.

KIRKPATRICK, District Judge. The complainant in this cause has filed his bill of complaint, in which, among other things, he claims title to certain letters patent of the United States numbered 401,187 and 401,188. He sets out that these patents were issued on the 9th of April, 1889, to one Terrence A. McCauley, otherwise known as Thomas A. McCauley, and then avers as follows:

"And your orator further shows that the said Terrence A. McCauley, otherwise known as Thomas A. McCauley, died on the 17th day of April, 1894, and that Daniel McCauley, of Springfield, Massachusetts, was on the 23d day of May, 1894, duly appointed by the surrogate of the city and county of New York administrator of the goods, chattels, and credits of said Terrence A. McCauley, otherwise known as Thomas A. McCauley."

The bill then alleges that the said Daniel McCauley, on the 5th day of October, 1894, as such administrator, duly assigned, transferred, and set over the entire right, title, and interest in said letters patent to William H. Hoshcke, through whom the complainant claims to be the owner. To this bill the defendant has filed a general demurrer, and, as one of the causes of demurrer, shows that the bill of complaint fails to set out a good and sufficient title to the said letters patent. In examining the complainant's chain of title as set out in the bill of complaint, it will be observed that the only allegations concerning the authority of Daniel McCauley to make a transfer and assignment of Terrence A. McCauley's interest or ownership of the patents in suit

are that Terrence A. McCauley, otherwise known as Thomas A. McCauley, is dead, and that Daniel McCauley was duly appointed his administrator by the surrogate of the city and county of New York. The surrogate's court is one of inferior and limited jurisdiction (*Bloom v. Burdick*, 1 Hill, 139); and therefore the facts upon which the jurisdiction of the court is founded should be set out in the pleadings (*Dakin v. Hudson*, 6 Cow. 224). Upon such questions of fact the bill is silent. Whether Terrence A. McCauley, otherwise known as Thomas A. McCauley, died intestate, whether at the time of his death he was a resident of the city and county of New York, or whether he had in the city and county of New York any property to be administered upon, the bill omits to state. If these jurisdictional facts had been alleged, it would have been necessary to have shown, further, that the court had proceeded to final decree before the proceedings would have been presumed to be regular. *Reeves v. Townsend*, 22 N. J. Law, 396.

The mere designation or appointment of one to act as administrator is but an interlocutory order, and confers no powers upon the appointee. It is but a preliminary step to the final act of granting the letters of administration, which issue to the person appointed when he shall have given bond for the faithful performance of his duties or otherwise comply with the requirements of the court. So, it was held in *Beach v. King*, 17 Wend. 197, "that one cannot be an administrator unless letters of administration of the goods, chattels, and credits of the intestate have been granted to him"; and that "the proper mode of pleading the fact is by direct allegation that such letters were granted." The court held that the allegation that the party was "duly appointed administrator consists partly of matter of fact and partly of matter of law, and was not capable of trial." The case of *Beach v. King*, *supra*, differs from that of *Wheeler v. Dakin*, 12 How. Prac. 537, cited on plaintiff's brief, in that the latter was rendered under the Civil Code of Procedure in New York, which has no applicability in the state of New Jersey. From what has been said, it follows that the complainant has failed to show, by proper averments, that Daniel McCauley had any authority to make transfer of the interest of Terrence A. McCauley or Thomas A. McCauley, to whom the letters patent were issued; and that in consequence the title thereto, so far as the allegations in the bill show, still remains in the heirs or legal representatives of Terrence A. McCauley or Thomas A. McCauley, and not in the complainant. Inasmuch as there is but one demurrer, which cannot be allowed in one part and overruled as to another part in the same proceeding (*Wellesly v. Wellesly*, 4 Mylne & C. 554), judgment must be for the defendant.

DAVIS v. PORT ARTHUR CHANNEL & DOCK CO.
(Circuit Court of Appeals, Fifth Circuit. May 13, 1898.)

No. 699.

1. CORPORATIONS—TEXAS CHANNEL AND DOCK COMPANIES—POWERS.

A channel and dock company organized under Sayles' Ann. St. (Tex.) 1897, §§ 721, 722, and authorized to construct a channel "across, along, through, or upon" certain waters within the jurisdiction of the states, is not restricted to a route through such waters, but may construct its channel along the borders of the same.

2. INJUNCTION PENDENTE LITE—CONDEMNATION PROCEEDINGS.

An application for an injunction pendente lite is addressed to the sound discretion of the court, and will be granted only to prevent irreparable injury; hence a corporation having instituted proceedings for the condemnation of land, and a controversy having arisen as to the value thereof, an injunction will not issue to restrain the corporation from entering upon the land until the termination of the condemnation suit, where the corporation has given bond in a sum sufficient to cover all damages, and the whole controversy appears to be rather an attempt to defeat the purpose of the corporation than a simple contest as to the value of the land.

Appeal from the Circuit Court of the United States for the Eastern District of Texas.

This is an application by the appellant, Davis, in the United States circuit court for the Eastern district of Texas at Beaumont, for an injunction restraining the appellee, the Port Arthur Channel & Dock Company, its agents and employes, from entering or remaining upon two certain tracts of land in which the appellant owns an undivided interest, and from the prosecution of any work or construction on any part thereof, or from doing any act in jeopardy of plaintiff's right and peaceable possession of said premises pending the adjudication of the rights of the plaintiff and the defendant in a common-law cause in said court, in which the defendant company was seeking to condemn said land for the purpose of cutting a channel through it. Plaintiff's land is described as an undivided one-eighth interest in divisions A and 6 of a tract of land on the west side of and upon the waters of Sabine Lake and Sabine Pass, known as the "Dennis Gahagan League" of land. The common-law case referred to is a proceeding which was originally commenced in the county court of Jefferson county, Tex., by the appellee, to condemn said land for the purposes of said channel company, both as to the construction of its channel and for a right of way on each side of it. That suit was removed to the United States circuit court at Beaumont after the commissioners appointed by the county judge for that purpose had awarded damages to appellant, and the amount had been paid into the county court, and the appellant had filed his objections to the award, and the proceedings had become a case in court for trial as in other causes, and this application was filed after said removal. The grounds of the application are, briefly, as follows: "(1) The charter of the Port Arthur Channel and Dock Company is void, because it authorizes the construction of its channel from the waters of the Gulf of Mexico, at Sabine Pass, along and across Sabine Lake to a point at or near the town of Port Arthur; and Sabine Lake is a body of water not within the jurisdiction of the state of Texas, and said charter is not, therefore, authorized by the constitution and laws of the state of Texas nor of the United States, but in contravention thereof. (2) Said charter contemplates the construction of a channel through the waters of Sabine Lake, not to enter the mainland until it reaches a point at or near the town of Port Arthur, whereas the route of the channel, as designated by said company, does not touch Sabine Lake, but enters the mainland before reaching said lake, and continues through the mainland until it reaches Taylor's Bayou, a navigable stream, and, after crossing the same, extends to the town of Port Arthur. (3) The usefulness of Taylor's Bayou as a navigable stream would be destroyed by cutting the channel into it, as its waters would be diverted from their natural