

COLT, Circuit Judge. The bill of complaint in this case was filed in the state court on March 22, 1895. By the eighth rule of chancery practice of the state court, a defendant is required to file his answer, plea, or demurrer within one month after the day of appearance, the day of the appearance being the return day of the subpoena. A subpoena was issued in this case returnable at the May rules, 1895, and was duly served on the defendants. The defendants appeared, and answered to the bill, and on July 3, 1895, the plaintiff filed his replication. The bill was subsequently dismissed as to all the defendants except the Boston Safe-Deposit & Trust Company. On April 10, 1897, the plaintiff obtained leave of court to amend his bill of complaint. The petition of the trust company for removal was filed June 14, 1897.

The act of congress of 1887 (24 Stat. 554) provides that any party entitled to remove a suit from a state court into the circuit court of the United States "may make and file a petition in such suit in such state court at the time, or any time before the defendant is required by the laws of the state or the rule of the state court in which such suit is brought to answer or plead to the declaration or complaint of the plaintiff." In construing this statute, the supreme court has repeatedly held that the defendant's right of removal can only be exercised before the time he is required to plead in the state court. In *Martin's Adm'r v. Railroad Co.*, 151 U. S. 673, 687, 14 Sup. Ct. 533, 538, the court, speaking through Mr. Justice Gray, observes:

"Construing the provision now in question, having regard to the natural meaning of its language, and to the history of the legislation upon this subject, the only reasonable inference is that congress contemplated that the petition for removal should be filed in the state court as soon as the defendant was required to make any defense whatever in that court, so that, if the case should be removed, the validity of any and all of his defenses should be tried and determined in the circuit court of the United States."

See, also, *Goldey v. Morning News*, 156 U. S. 518, 524, 15 Sup. Ct. 559; *Railway v. Brow*, 164 U. S. 271, 277, 17 Sup. Ct. 126; *Manley v. Olney*, 32 Fed. 708. Motion to remand is granted.

UNITED STATES v. EISENBEIS et al. (HOGG, Intervener).

(District Court, D. Washington, N. D. June 18, 1898.)

1. FEDERAL COURTS—FOLLOWING STATE DECISIONS.

Whether a mere equitable interest in lands becomes impressed with the lien of a judgment against the owner of such interest is a question of local law, in regard to which the federal courts will follow the state decisions.

2. JUDGMENT LIENS—EQUITABLE INTERESTS IN LANDS.

The equitable interest of one who has conveyed the legal title in his lands to third parties, for the purpose of defrauding his creditors, does not, in the state of Washington, become impressed with the lien of a judgment thereafter rendered against him.

3. DEPOSITS IN COURT—CONDEMNATION PROCEEDINGS—RIGHTS OF CREDITORS.

Money in court awaiting distribution to those in whose favor awards have been made in condemnation proceedings instituted by the govern-

ment cannot be intercepted by means of a creditors' bill, or intervening petition in the nature thereof. Such a proceeding would be, in effect, a suit against the government and the clerk of court, to make them liable as garnishees.

John E. Humphries, for intervener.
Allen Weir, for respondents.

HANFORD, District Judge. This suit was instituted by the government of the United States against the several owners of a tract of land for condemnation of said land for the use of the government as a site for the Point Wilson fortifications. All persons who, by the public records, appear to have been owners of any part of the tract required, or of any interest therein, or having liens thereon, were made defendants. The list includes Henry Bash and his wife, and their son, Francis L. Bash, and their daughter, Clementine B. Long, and her husband, B. M. Long. By the judgment of the court it was determined that said Francis L. Bash and B. M. Long were the owners of undivided interests of part of the tract condemned, and compensation therefor was awarded to them. After the trial and final adjudication of the rights of the parties, J. B. Hogg, as administrator of the estate of George E. Hogg, deceased, by leave of the court, filed a petition, as an intervener, for the purpose of contesting the right of said Francis L. Bash and B. M. Long to receive the money awarded to them as compensation for their interests in said land, and in his petition the intervener prays to have said money paid to him, and applied in satisfaction of a judgment rendered by the superior court of the state of Washington for Jefferson county, in the month of April, 1893, in favor of George E. Hogg and against Henry Bash. The amended petition avers that on and prior to the 30th day of May, 1892, said Henry Bash and Charles Eisenbeis were the owners as tenants in common of part of said tract of land described in the amended petition; and on said day, for the purpose of defrauding the creditors of said Henry Bash, he conveyed the legal title to his interest in said property to said Francis L. Bash and B. M. Long, without consideration, and his said grantees took the title, and have since held the same, merely as trustees for said Henry Bash, who has been ever since and is the real owner thereof, and by reason of his ownership the said judgment in favor of George E. Hogg became a lien upon said property, and continued to be a lien, up to and including the time of the condemnation proceedings herein. The amended petition also avers that the debt for which said judgment was rendered was a community debt of said Henry Bash and his wife, and that said Henry Bash at all times since the date of said judgment has been insolvent, having no property upon which an execution could be levied, except his interest in said land, and that said judgment remains wholly unsatisfied. The case has been argued and submitted upon a demurrer to said amended petition.

In the argument the attorney for the intervener has expressly disclaimed intention to attack the validity of the conveyance from Henry Bash and wife to Francis L. Bash and B. M. Long, on the ground that the same was executed on Memorial Day, and in the amended

petition it is averred explicitly that the legal title was conveyed to, and became fully vested in, said Francis L. Bash and B. M. Long. The main question in the case, therefore, is whether, under the laws of this state, a mere equitable interest in real estate becomes impressed with the lien of a judgment against the owner of such equitable interest. This is a question of local law, because a judgment of a state court in a personal action becomes a lien upon real estate of the judgment debtor only by force of the statutes of the state; and the supreme court of this state having passed upon the question, and rendered a decision declaratory of the law of this state, it becomes the duty of this court to accept that decision as conclusive, and follow it. In the case of *Sawtelle v. Weymouth*, 14 Wash. 21, 43 Pac. 1101, the question now under consideration was considered and decided by the supreme court of this state. In that case a judgment creditor claimed a lien upon real estate, which prior to the date of the judgment had been conveyed by the judgment debtor to his wife, without consideration, and thereafter transferred by the husband and wife to other near relatives in payment of existing debts. In the opinion by Mr. Justice Gordon, the court said that, at the date of entry of the judgment, the legal title to the premises in question was in Margaret E. Weymouth, the wife of the judgment debtor. "Hence no lien attached to the land as a consequence of said judgment or of the filing of the transcript, and the subsequent conveyances by the respondent Margaret E. Weymouth and her husband to De Lanty and Strong, for value, prior to any proceedings taken by said creditor, attacking the transfer from the husband to the wife, were sufficient, and would be upheld." In this case the legal title was conveyed by the judgment debtor prior to the date of the judgment. No proceedings were commenced by the intervener or his testator attacking the validity of the transfer of title from Henry Bash and wife to their son and son-in-law until after the trial and determination of the issues in the condemnation proceedings by which the land was appropriated by the United States government. In effect, the legal title and the interest of all the parties named as defendants was, by the final judgment herein, conveyed to the government, so that the case comes fairly within the rule laid down by the supreme court of this state in the case above cited. The judgment set forth in the intervener's petition never became a lien upon any part of the land appropriated by these proceedings. Therefore the petition fails to show that the intervener has any just or legal claim to any part of the money paid into the registry, or any standing to contest the right of the parties to whom said money has been awarded to receive the same.

The intervener's amended petition cannot be treated as a creditors' bill, and he cannot be permitted to intercept the passage of money from the government of the United States to the persons to whom compensation was awarded, while that money remains in the custody of this court, for two reasons: First. Such a proceeding would be, in effect, a suit against the government of the United States, and, the clerk of this court having legal custody of the funds, to make them liable to the intervener, as garnishee. Proceedings of

this nature, to reach funds in legal custody, are not tolerated. Second. The intervener's amended petition is insufficient as a creditors' bill for the reason that it does not aver that an execution has been issued upon the judgment, and returned nulla bona, nor that the legal remedies for enforcing the judgment have been exhausted. Demurrer sustained.

EASTERN BUILDING & LOAN ASS'N. V. BEDFORD.

(Circuit Court, W. D. Tennessee, W. D. May 31, 1898.)

No. 487.

1. FOREIGN CORPORATIONS—STATE REGULATION—"DOING BUSINESS."

Complainant, a New York corporation, loaned money to defendant in Tennessee, taking as security a mortgage upon land in the latter state, without having complied with the conditions prescribed by the Tennessee statutes for foreign corporations doing business within the state. The negotiations were all carried on by mail, through agents in Tennessee, the loan being approved at the company's home office in New York, and all notes being payable at that office. *Held*, that the contract was made in New York, and to be performed there, and that the company was not doing business in Tennessee within the meaning of the statutes.

2. CONTRACTS—NONENFORCEABLE IN STATE COURTS—POWER OF FEDERAL COURTS.

A federal court will not refuse to enforce a valid contract, harmless in itself, which is nonenforceable in the state courts merely on account of noncompliance with state administrative regulations.

3. USURY—LEX LOCI CONTRACTUS GOVERNS.

A contract which would be usurious in the state where it is sought to be enforced is not subject to the usury penalties of that state if it is not usurious under the law of the state where it was made.

4. CONTRACTS—ENFORCEABILITY—CURING DEFECTS.

Where a contract is nonenforceable simply by reason of noncompliance with administrative regulations of the state, and not because of any vice inherent in the contract itself, the defect is cured, and the contract rendered enforceable, by subsequent compliance with such regulations.

In Equity. Bill to foreclose a mortgage.

By an act of the legislature of the state of Tennessee of March 28, 1891 (chapter 2), entitled "An act to regulate the business of building and loan associations," it was required that no building and loan association organized under the laws of another state should do business in Tennessee unless said association should deposit, and continually thereafter keep deposited, in trust for all its members and creditors, mortgages amounting to not less than \$25,000 or more than \$50,000, at the discretion of the treasurer. They were also required, before commencing to do business, to file with the treasurer of the state a duly-authenticated copy of their charter or articles of incorporation, and a certificate of deposit of the valid securities required. By another section the officers, directors, or agents of foreign building and loan associations were forbidden to solicit subscriptions to their stock in that state, or to sell or knowingly cause to be issued to a resident of the state any stock of the association, unless a deposit had been made in accordance with the terms of the act, and it had otherwise complied with its provisions. Agents were required to be licensed by the treasurer, for which they were to pay a fee of \$2, and he was also to receive a fee of \$25 for filing the papers mentioned in the act. Any violation of the prohibition against the sale of stock without a compliance with the act was made a misdemeanor, and punished as such by fixed penalties. By another act of March 17, 1891 (chapter 95), chapter 31 of the acts of the legislature of Tennessee for the year 1877, being sections 1992 to 2003 of Milliken & Vertrees' Code, was amended so as