

tect his interests and conform to his wishes. Unless this appears, equity will not, in cases of this character, entertain the suit. When a stockholder of a corporation brings a suit in chancery for an accounting and for equitable relief in general, in his own behalf, he must not only set out in full the special grievances as to which he complains, but he must also show that he himself, as the representative of the stock complaining, has made an earnest effort—not a simulated one—to induce remedial action on the part of the managers of the corporation, or that he has made an honest effort to obtain action concerning said matters by the stockholders as a body, showing at the same time, in detail, the particulars of such efforts on his part.

Nor does it appear from the bill that the complainant was the owner of the stock now claimed by him at the time the matters complained of occurred. The allegation that he was the owner of the same at the time the suit was instituted is not sufficient. *Hawes v. Oakland*, 104 U. S. 450; *Dimpfell v. Railway Co.*, 110 U. S. 209, 3 Sup. Ct. 573; *Brewer v. Theatre*, 104 Mass. 378.

The motion to discharge the receiver is sustained, and an order to that effect will be entered. The case will be retained on the docket of this court, only for the purpose of adjusting the accounts of said receiver, and as soon as that has been completed an order will be signed by the court dismissing the same.

PLATT v. ADRIANCE (three cases).

(Circuit Court, S. D. New York. December 12, 1898.)

SECURITY FOR COSTS—SUITS BY RECEIVER OF NATIONAL BANK.

A receiver of a national bank, bringing suits in another jurisdiction against stockholders, is not exempted by Rev. St. § 1001, from being required to give security for costs. While in such suits process may, in a sense, be said to issue by direction of a department of the government, it does not appear that, in the event of an adverse decision, the costs taxed against the receiver can be paid from the contingent fund of such department, as contemplated by such section.

These are suits by William A. Platt, as receiver of the Commercial National Bank of Colorado, against I. Reynolds Adriance, William A. Adriance, and John E. Adriance, respectively, as stockholders in such bank. Heard on motions to require plaintiff, who resides in Denver, Colo., to file security for costs.

Silas Wodell, for the motion.

Omar Powell, opposed.

LACOMBE, Circuit Judge. Congress has provided that, in certain actions which are brought under federal statutes, no security for costs shall be given; but it was not so disregarding of the rights of the individual citizen as to deprive him of his right to costs in the event of his success. The section of the Revised Statutes reads as follows:

"Sec. 1001. Whenever * * * process in the law * * * issues from a circuit court * * * by direction of any department of the government no bond, obligation or security shall be required * * * to answer * * * in

costs. In case of an adverse decision, such costs as by law are taxable against * * * the party acting by direction as aforesaid, shall be paid out of the contingent fund of the department under whose directions the proceedings were instituted."

If process in this case is taken out by the receiver of the national bank, plaintiff herein, "by direction of any department of the government," the case will be within the express language of this section, and no security for costs should be required, and, in the event of defendant's success, he may be paid his costs out of the contingent fund of the treasury department. In one sense, the receiver, who, in the language of the supreme court in *Kennedy v. Gibson*, 8 Wall. 498, is "the instrument of the comptroller of the currency," may be said to act under the comptroller's direction in bringing suits against alleged delinquent stockholders; but it would seem as if congress had in mind some more specific direction. To claims by successful defendants in such suits to be paid out of its contingent fund it is altogether probable that the treasury department would reply that it had not specifically directed such suits to be brought, and that the charge was not properly against congressional appropriations for the expenses of the department, but against the funds of the defunct bank, which the receiver might hold for distribution among its creditors. Inasmuch as congress has so carefully provided for the one case, and has failed to provide for the other, it must be assumed that it did not intend to relieve receivers of national banks from the ordinary obligations of nonresident litigants when they do not act under such direction as will make the treasury department contingent fund liable for costs. It is conceded that the right of the court to require security for costs from receivers is discretionary, but there can surely be no doubt as to how such discretion should be exercised. It would be most unjust if a defendant who succeeds in a suit brought here by the receiver could recover his costs only by going to Colorado, and himself suing there upon the judgment in his favor.

Unless, therefore, within 20 days, plaintiff shall file a certificate of the comptroller of the currency to the effect that process in this action is taken out by express direction of the treasury department, he will be required to file security (or deposit) for costs to the amount of \$100 in each case. Defendant may have 10 days after notification of the filing of such certificate or security in which to answer.

AMERICAN SURETY CO. OF NEW YORK v. WORCESTER CYCLE MFG.
CO. et al.

(Circuit Court, D. Connecticut. November 28, 1898.)

No. 975.

SUITS TO FORECLOSE SEPARATE MORTGAGES—RECEIVERS.

A bill was filed to foreclose a first mortgage on property which in part, at least, was already in the hands of a receiver of the court in a suit to foreclose a later mortgage, and the receiver, by leave of court, was joined as a defendant. *Held*, that the suit was not necessarily an independent one, and, as a decree would not necessarily disturb the receiver's possession, the bill would not be dismissed on demurrer.