failing to collect it from Compton. If he had collected it from Compton, the Wabash Railroad Company would have had to pay interest. I do not see why it should not have to pay interest now. The claim is not an unliquidated, unascertained claim. It was never objected to, and never appealed from, in so far as its amount was originally adjudicated. The motion to retax the costs is overruled.

ROBINSON v. SOUTHERN NAT. BANK.

(Circuit Court, S. D. New York. February 6, 1899.)

APPEAL BOND — RECEIVER OF NATIONAL BANK — APPEAL BY DIRECTION OF COMPTROLLER.

Under Rev. St. § 1001, as construed in Bank v. Mixter, 5 Sup. Ct. 944, 114 U. S. 463, no security need be given by a receiver of an insolvent national bank on an appeal taken by direction of the comptroller of the currency.

On Application for an Order Dispensing with Security on Appeal.

Edward Winslow Page, for complainant.

Hornblower, Byrne, Taylor & Miller, for defendant.

LACOMBE, Circuit Judge. In a recent decision, filed December 12, 1898 (Platt v. Adriance, 90 Fed. 772), this court discussed the question when security should be dispensed with in accordance with the provisions of section 1001, Rev. St. U. S. The conclusion reached was that security should be dispensed with only when the process was issued or the appeal taken "by direction of any department of the government," and it was directed in that case that, unless the plaintiff should file a certificate of the comptroller of the currency to the effect that process was taken out by express direction of the treasury department, he should be required to file security for costs in the usual way. In that case no certificate of the comptroller of the currency was presented, but security for costs was duly filed. In the case at bar the plaintiff has filed a signed direction by the comptroller of the currency, requiring appeal to be taken. This paper does not indicate a direction by the treasury department. It is suggested that the comptroller of the currency is a department by himself, and not a branch of the treasury department. The statutes, however, do not seem to warrant this conclusion, and it is doubtful whether a "direction" of the comptroller of the currency is in fact a "direction" of the treasury department. It appears, however, that the supreme court, in Bank v. Mixter, 114 U. S. 463, 5 Sup. Ct. 944, held that, under section 1001 of the Revised Statutes, no bond for the prosecution of a suit, or to answer in damages or costs, is required on writs of error or appeals issuing from or brought to the supreme court, by direction of the comptroller of the currency, in suits by or against insolvent national banks or the receivers thereof. The opinion in no way indicates the theory upon which the language of the section, "by direction of any department of the government," is thus construed, but the practice followed by the supreme court as therein indicated should be followed here. No security need be filed.

MONTGOMERY v. PERKINS et al.

(Circuit Court, S. D. New York. February 17, 1899.)

PRIVILEGED COMMUNICATIONS—CONVERSATIONS BETWEEN COUNSEL.

Conversations between the solicitor and counsel of a party relating to the subject-matter of a suit are privileged.

On Application to Compel the Solicitor of the Complainant to Answer Certain Questions.

William C. Perkins, for the motion.

L. J. Phelps, opposed.

LACOMBE, Circuit Judge. Question 26 is improper in form, calling for a legal conclusion. As to questions 29 and 30, they are clearly improper so far as conversations of the witness with Mr. Macfarland are concerned, if Mr. Macfarland is, as it is asserted on the brief, counsel for complainant. Certainly conversations between solicitor and counsel for a party touching the subject-matter of the litigation are privileged. As to consultations with Mrs. Day and Mr. Larocque, there is some suggestion in the brief that they are the witness' clients in this matter, being the real parties in interest for whom he is acting. If this be so, and it is made to appear in the record, the witness is entirely within his privilege in refusing to answer; but, as I understand the situation, the record does not disclose any such relation, and the witness does not assert that it exists. If it does not exist, I am wholly at a loss to understand upon what theory privilege of counsel is claimed as to these questions, which ask as to conversations or consultations, not with the witness' clients, but with some third persons. No authority is referred to, and I know of no principle of law which would call for such an extension of the doctrine of privilege.

DONAHUE et al. v. CALUMET FIRE-CLAY CO.

(Circuit Court, D. Kentucky. May 6, 1899.)

REMOVAL OF CAUSES—TIME FOR FILING PETITION—EFFECT OF ANSWERING AFTER OVERRULING OF OBJECTIONS TO JURISDICTION.

Where a defendant in a state court, a corporation of another state, appeared specially, and moved to quash the sheriff's return of service, and, on the overruling of its motion, reserved a bill of exceptions, and in its answer and at all times thereafter insisted on its objection to the jurisdiction of the court over it, the fact that it answered to the merits, and took other action, by motion and otherwise, in preparation for trial, did not constitute such a voluntary appearance as would debar it from exercising its right to remove the cause to a federal court, when, on its subsequent motion, the order overruling its objection to the service was set aside, leaving the question whether it could legally be required to answer still pending.

On Motion to Remand.

Wallace & McDonald and J. D. Reed, for plaintiffs.

D. W. Sanders and C. B. Seymour, for defendant.