

posit for him, subject to the law governing such deposits, and that the relation of debtor and creditor was not established between him and the bank. We find no error in the decree of the circuit court that the receiver pay the appellee the full amount of the fund so deposited to its credit.

But the objection which is urged by the appellants to the allowance of interest on the claim must be sustained. The receiver disallowed the claim, and the suit was brought to obtain a decree for its payment. No interest is chargeable against the fund in the receiver's hands, based upon his erroneous action in disallowing claims. It is his function, by and under the direction of the comptroller, to disburse the fund according to law. In the matter of the allowance or disallowance of claims he must exercise his judgment. If he make an erroneous decision, the law does not contemplate that the other creditors shall suffer therefor. If interest is allowed to the appellee, the dividends payable to the other creditors will by that amount be reduced. In *White v. Knox*, 111 U. S. 784, 4 Sup. Ct. 686, Mr. Chief Justice Waite said:

"The only claims the comptroller can recognize in the settlement of the affairs of the bank are those which are shown, by proof satisfactory to him, or by the adjudication of a competent court, to have had their origin in something done before the insolvency. It is clearly his duty, therefore, in paying dividends, to take the value of the claim at that time as the basis of distribution. If interest is added on one claim after that date, before the percentage of dividend is calculated, it should be upon all, otherwise the distribution would be according to different rules, and not ratably, as the law requires."

The demand for interest in this case is not based upon any action of the bank itself before insolvency. It rests solely upon the disallowance of the claim by the receiver. The cause will be remanded to the circuit court, with instructions to so modify the decree as to disallow the interest upon the appellee's claim. In other respects the decree will be affirmed.

In re DUNNING.

(Circuit Court of Appeals, Ninth Circuit. May 23, 1899.)

No. 538.

APPEAL AND ERROR—ASSIGNMENT OF ERRORS.

Where, on appeal from a final order of the district court granting a discharge to a bankrupt, no assignment of errors is filed in such court, as required by rule 11 of the circuit courts of appeal (31 C. C. A. cxlvi., 90 Fed. cxlvi.), the judgment of the district court will be affirmed.

Appeal from the District Court of the United States for the Southern District of California.

Milton K. Young, for appellant.
Franklin P. Bull, for appellee.

Before GILBERT and MORROW, Circuit Judges, and HAWLEY, District Judge.

GILBERT, Circuit Judge. The appeal was taken in this case from the final order of the district court granting Eber T. Dunning a discharge from all debts and claims which were made provable by the acts of congress relating to bankruptcy which existed on the 3d day of September, 1898. No assignment of errors was filed in the district court, and the requirements of our rule 11 in that respect were wholly disregarded. On account of such failure to comply with the rule, the judgment of the district court will be affirmed. *U. S. v. Goodrich*, 4 C. C. A. 160, 54 Fed. 21; *Insurance Co. v. Conoley*, 11 C. C. A. 116, 63 Fed. 180. We place our judgment of affirmance wholly upon the ground indicated, in the hope that attention may be drawn to the necessity of compliance with the rule. It may be added that upon the hearing of the cause not only was no "plain error not assigned" suggested, but, upon the contrary, the court was convinced that upon the merits the decision of the district court was not erroneous.

EMBLEM v. LINCOLN LAND CO. et al.

(Circuit Court, D. Nebraska. June 23, 1899.)

1. PUBLIC LANDS—CONTROL OF DISPOSITION—POWERS OF CONGRESS.

The paramount control over the disposition of the public lands of the United States remains in congress, and the fact that a contest over the right of entry of such lands is pending before the land department, a creation of congress, and not of the constitution, does not deprive congress of such paramount control, and it may at any time, by an act passed for that purpose, withdraw such contest from the jurisdiction of the department and itself determine the rights of the parties.

2. SAME—DECISION OF CONTEST BY SECRETARY—RIGHT OF SUCCESSOR TO ANNUL.

A secretary of the interior has no power to annul a decision of his predecessor which determines the rights of the parties to a contest for entry of public lands; such determination being a judicial act, which can only be reviewed by the courts.

3. SAME—CONTEST OF ENTRY—RIGHTS OF CONTESTANT.

Section 2 of the act of May 14, 1880 (21 Stat. 140), giving a contestant who has paid the land-office fees and procured the cancellation of a prior entry of public lands a preferred right to enter the same, gives such contestant no vested rights in the land until the cancellation of the existing entry; and hence, where the decisions of the land officers, so far as a contest had progressed, were adverse to the contestant, and during the pendency of the proceedings congress deprived the land department of further jurisdiction by the passage of a special act confirming the title of the entryman, the contestant acquired no vested rights in the land which a court can recognize or enforce.

4. SAME—PAYMENT OF CONTEST FEES.

The payment of contest fees and costs by a contestant of an entry of public land gives him no right in the land, unless the contest results in the cancellation of the prior entry.

On Demurrer to Amended Bill.

T. J. Mahoney and E. R. Duffie, for complainant.

J. W. Deweese and F. E. Bishop, for defendants.

SHIRAS, District Judge. In the bill demurred to it is averred that on September 19, 1885, one George F. Weed made a cash pre-emption