

petition the Sandusky Company and the receivers appointed by the Huron common pleas court. As the lessees are receivers of a court, they cannot be brought in here as parties, except with the permission of the court appointing them. If that permission is withheld, it will then become a question whether they are such necessary parties as to prevent this court from proceeding to adjudicate who are entitled to the rental fund now in possession of its receivers. I cannot suppose that receivers in a state court or the court appointing them will decline to permit them to be made parties to this proceeding when the purpose of their appointment was the collection of rent from the receivers of the Baltimore & Ohio Railroad Company appointed by this court. If, however, it is not deemed proper to allow them to become defendants to this petition, it may become a matter of serious consideration whether they can be granted leave to file a petition herein against the receivers of this court.

The issue made on the plea of the Central Ohio Company to the petition is with the petitioners, the plea is overruled, and leave is given to answer. Leave is also given to the petitioners to make new parties.

HARRISON et al. v. FARMERS' LOAN & TRUST CO. OF NEW YORK.

(Circuit Court of Appeals, Fifth Circuit. May 31, 1899.)

No. 816.

1. CREDITORS' SUITS—RIGHT TO MAINTAIN.

Simple-contract creditors cannot come into a court of equity to obtain a seizure of property of the debtor in satisfaction of their claims.

2. SAME—FOLLOWING STATE PRACTICE.

This is so though a statute of the state may authorize such a proceeding in a state court.

3. SAME—DISMISSAL WITHOUT PREJUDICE.

When a simple-contract creditor files a creditors' bill, the dismissal should be without prejudice.

4. SAME—MODIFICATION OF DECREE ON APPEAL.

When a decree dismissing a bill absolutely is erroneous, in that the dismissal should be without prejudice, the court will modify it on appeal, though complainant does not urge the error.

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

J. E. Gilbert and E. B. Perkins, for appellants.

H. B. Turner and Frederick Geller, for appellee.

Before PARDEE, McCORMICK, and SHELBY, Circuit Judges.

PER CURIAM. The appellants were simple-contract creditors of the Greenville Water & Electric Light Company. Their claim had not been reduced to judgment, and they had no express lien, by mortgage, trust deed, or otherwise. It is well settled by the supreme court that such creditors cannot come into a court of equity to obtain a seizure of the property of a debtor, and its application to the satisfaction of their claims; and this, notwithstanding

a statute of the state may authorize such a proceeding in the courts of the state. *Hollins v. Iron Co.*, 150 U. S. 371, 378, 14 Sup. Ct. 127; *Scott v. Neely*, 140 U. S. 106, 11 Sup. Ct. 712; *Cates v. Allen*, 149 U. S. 451, 13 Sup. Ct. 883, 977. It follows that the demurrer was properly sustained in the circuit court.

The decree dismissing the bill was absolute, and, although the appellants have not objected on that account, it should be modified. *Lacassagne v. Chapuis*, 144 U. S. 119, 126, 12 Sup. Ct. 659. The decree of the court below dismissing the bill is so modified as to declare that it is without prejudice to an action at law, or to the assertion by the appellants in the suit by the *Farmers' Loan & Trust Company v. The Greenville Water & Electric Light Company* of any equity they may have under the statutes of the state of Texas providing for the appointment of receivers against corporations; and as so modified the decree is affirmed.

HOPKINS v. NORTHWESTERN LIFE ASSUR. CO.

(Circuit Court, E. D. Pennsylvania. June 7, 1899.)

No. 87.

1. LIFE INSURANCE—SCOPE OF CONTRACT—SUICIDE.

It is a term of every policy of life insurance, implied if not expressed, that the insured will not die by his own willful and deliberate act, and therefore, if he does die by such act, his life is terminated by a risk against which the company has not insured; and the fact that the beneficiary is a person other than the insured himself cannot enlarge the scope of the contract, nor authorize a recovery thereon.

2. SAME—PRESUMPTION OF SANITY.

Where it is shown that an insured person committed suicide, in the absence of evidence that he was insane at the time, his sanity will be presumed.

On Motion by Defendant for Judgment Notwithstanding the Verdict.

Bernard Gilpin, for plaintiff.

Ira J. Williams and Simpson & Brown, for defendant.

McPHERSON, District Judge. In April, 1892, John S. Hopkins made a contract with the defendant,—then called the Northwestern Masonic Aid Association,—which for present purposes we shall assume to have been a contract of life insurance. By this policy his life was insured for \$10,000 upon the assessment plan, the beneficiaries named therein being his wife, the plaintiff, if living, and, in case of her death, his children, or his heirs at law. The policy provided that a "change of beneficiaries can be made at any time, without charge, upon complying with the by-laws." It contained no express condition against suicide. In December, 1897, Mr. Hopkins decided to abandon the assessment plan, and accordingly applied to the company for a new policy of \$10,000, similarly payable to his wife or children, but providing for the payment of a defined annual premium during a period of 20 years. The substitution