

A demurrer is interposed, and it is urged this court has no jurisdiction; and proceedings, at least, against the executor and administrator should be instituted in the probate court of Le Sueur county, in the state of Minnesota, where the will of John Gordon was probated, as also the will of George D. Snow, the executor of Gordon's estate.

The concurrent jurisdiction of this court as a court of equity is undoubted. 1 Curtis, 178; 5 Mason, 95; 10 Howard, 56-70; and 7 Wall. 426. John Gordon's estate is liable for the payment of his debts, (see Minn. Rev. St., 570, § 26,) and the executor Snow, to the extent of the assets, was a trustee for creditors. If Borer, the present administrator, has not sufficient assets, the representatives of Snow must respond if sufficient assets of Gordon's estate have passed into their hands.

The bill of complaint alleges that Snow, in his life-time, received a large amount of assets from Gordon's estate, and that all the legacies and debts except this judgment have been paid. I think it not doubtful that this court, the complainant being a citizen of another state, can, under the circumstances set up in the bill, entertain jurisdiction, and follow the property in the hands of legatees, or the representatives of Gordon under the will, to secure payment of the judgment, and in so doing make the administrator of Gordon and the executor of Snow parties to this bill of complaint. If the entire assets of a decedent's estate are in the hands of an executor or other trustee ready for distribution, and a demand is made by one or more distributees, which is refused, and the trustee will not account, I think this court, in a proper case, could enforce a distribution. The same principle is involved here. The jurisdiction of the probate court is not exclusive in such a case, as the bill in equity foreshadows. I understand the decision in *Payne v. Hook*, 7 Wall. 426, to go to this extent, without reference to the peculiar *status* of the probate court of Missouri.

Demurrer overruled, and defendants have until April rule day to answer.

BECHER and others v. THE WELLS FLOURING MILL Co. and others.

(Circuit Court, D. Minnesota. March, 1880.)

CORPORATION—ASSIGNEES OF STOCK CERTIFICATES—SHARE-HOLDERS—TRANSFER UPON THE BOOKS OF THE CORPORATION.—The assignees of stock certificates in a corporation, by assignment from persons to whom the certificates were originally issued, are not, by virtue of such assignment, share-holders, when the transfer of shares is required to be made upon the books of the company.

SAME—SAME—EVIDENCE AS TO CHARACTER OF ASSIGNMENT.—Evidence is admissible in behalf of the corporation to show the true character of such assignment in order to determine the relation of the assignees.

SAME—SAME—ULTRA VIRES—INJUNCTION.—An injunction will be refused, upon the prayer of such assignees, for the purpose of restraining such corporation from holding a meeting in order to increase the corporate debt, or from increasing such debt until the stock in controversy has been transferred to the assignees upon the books of the company, or from voting upon the stock thus assigned, where it appears that the stock was merely pledged by the assignment of the certificates, and it was manifest that the proposed increase of the corporate debt was not *ultra vires*.

Application for injunction, *pendente lite*. Motion to dismiss the plaintiffs' bill upon the hearing.

Davis, O'Brien & Wilson, for plaintiffs.

M. W. Green, for defendants.

NELSON, J. A suit in equity is brought by the complainants, claiming to be stockholders in the defendant corporation by virtue of certain certificates of stock assigned to them by the persons to whom they were originally issued, and who appear as owners on the books of the corporation. The certificates are not only assigned to the complainants, but written direction is given to the secretary of the corporation to make the necessary transfer upon the books. These certificates represent 109 shares of the stock—40 shares assigned to E. J. Becher, and the remainder to L. A. Becher. The relief prayed for is that the corporation and other defendants, officers and stockholders, may be enjoined from calling or holding any meeting of the company for the purpose of increasing the debt of said corporation; from increas-

ing such debt until after this stock has been transferred to the complainants upon the books of said company; and that the said defendants, and each of them, may be restrained and prohibited from voting upon any stock so, as aforesaid, assigned to complainants; and from further increasing the debt of said company by any proceeding, or in any manner whatever, until the further order of the court. A perpetual injunction is also prayed for, as well as general relief.

The defendant corporation was organized under the laws of the state of Minnesota, (Minn. Rev. St. 396,) and has been in operation since May 30, 1879, incurring an indebtedness, up to this time, for improvements and milling machinery, to the maximum allowed by the articles of association.

It is proposed to call a meeting for the purpose of increasing the stock of the corporation, in accordance with the law, to meet the demands of business, and no notice has been given the complainants.

It is pretty well settled that the assignees of stock certificates in a corporation, by assignment from persons to whom the certificates were originally issued, are not, by virtue of such assignment, shareholders, when the transfer of shares is required to be made upon the books of the company. See Field on Corporations, 75; Angel & Ames on Corporations; Minn. Rev. St. 398, § 135.

The mere assignment gives the assignee an equitable title only, except as against the assignor. The certificates do not constitute property in the corporation; they are the muni- cements of title, but it is the shares of stock which constitute the property, and the persons whose names appear upon the books of the corporation are presumed to be the stockholders; they have the right to vote and participate in directing the policy of the company. The corporation has not recognized the complainants as stockholders, and thus waived any right to require such registry, and the affidavits read on the hearing do not make it clear that a demand for the transfer of the stock was ever made. If it was, and there was a refusal to comply, legal proceedings would undoubtedly secure to the complainants the proper relief. It is clear that if this court