

that it is doing business in Illinois at all. The state can say to it any day, "Go!" and it must go. That being so, I do not see that the complainant has a legal right to say a corporation shall not be created in Illinois bearing its (the complainant's) name. If the state of Illinois may create a corporation bearing the same name as the complainant,—and it certainly can,—this court has no right by injunction to prevent anything from being done under the state law which is necessary in the creation of such a corporation. The commissioners perform a function under the laws of the state in the formation of the corporation. If they are not officers of the state they are instrumentalities employed by the state. If they can be enjoined from receiving stock subscriptions under the license issued to them by the secretary of state, I do not see why the latter might not be enjoined from issuing a license, or doing anything else under the state statute. The general law authorizing the secretary of state to issue a license to commissioners to receive stock subscriptions provides that no license shall be issued to two or more companies having the same name. Before bringing this suit the complainant should have brought to the attention of the secretary of state the matters alleged in the bill. He might, on a proper application, have revoked the license to the defendants, unless they adopted another name for their company. I do not think this court can interfere by injunction, at the instance of a foreign corporation, and prevent any necessary step from being taken under the statute of this state in the creation of a corporation.

I do not say what may be done if the defendants succeed in creating their corporation bearing the complainant's name, and a suit shall be brought by the complainant to prevent individuals claiming to be officers or managers of such corporation from interfering with the complainant's business, as already stated.

The temporary injunction heretofore granted is dissolved, and the bill is dismissed.

PENNSYLVANIA COAL CO. v. DOUGLAS and others.

(District Court, N. D. Illinois. March 9, 1885.)

This case is in all respects similar to *Lehigh Valley Coal Co. v. Hamblen*, ante, 225, and the bill is dismissed for the reasons already given.

RICHARDSON and others v. DAY and others.

(Circuit Court, N. D. Illinois. February 16, 1885.)

INSOLVENCY — ILLINOIS STATUTE — FRAUDULENT PREFERENCE — ACTION TO SET ASIDE.

No suit can be brought against the assignee of an insolvent, and a creditor to whom he has made a conveyance in fraud of his other creditors, until a demand has been made upon the assignee to sue, and he has refused so to do.

In Equity.

Flower, Remy & Gregory, for complainants.

S. D. Puterbaugh and H. B. Hopkins, for defendants.

GRESHAM, J. The demurrer to the bill in this case was argued last Monday. Day Bros. & Co. were wholesale and retail dry-goods merchants at Peoria, Illinois. On the twenty-eighth of September, 1884, this firm was indebted to the defendant Charles B. Day, late a member of the firm, and a brother of one of the partners of the firm, in the sum of \$200,000, and he was liable on the firm's paper for \$500,000 more. On this date the firm transferred to Charles B. Day its entire stock of goods, worth \$300,000, in discharge of the amount due him, and to secure him against loss on account of his liability upon the firm's paper. Charles B. Day at once took possession of the property transferred to him by bill of sale, which was the entire stock of goods, and the firm at once suspended and ceased to do business. On the ninth day of October following, the insolvent firm made an assignment of their remaining property, under the statute of Illinois, to the defendants Jack and Puterbaugh, for the benefit of the rest of their creditors. The transfer to C. B. Day included the entire assets of the firm, except some bills receivable, the face value of which was \$40,000, but the actual value of which was less than \$20,000. The bill avers that in order to evade the statute of Illinois governing assignments by insolvent debtors, and prohibiting preferences, it was agreed between the firm and Charles B. Day that the former should, by a bill of sale, transfer to the latter their entire stock of goods by way of preference over the other creditors.

The bill also alleges that Jack and Puterbaugh, the assignees, have neglected to take any measures for the recovery of the property transferred to C. B. Day, and that they do not intend to impeach the transaction between him and the assignors. The complainants, who have a claim against the insolvent estate amounting to \$7,700, bring the suit to recover the property transferred to C. B. Day, and have the proceeds thereof equally divided among all the creditors.

If it was true that the insolvent firm had determined to make an assignment under the state law, and that C. B. Day knew of the insolvency and of this disposition, and, for the purpose of evading the provisions of the law and preferring C. B. Day, it was agreed that the transfer should be made to him first in pretended payment of his debt,