

administration, thereby renders himself responsible for that wrong to any person aggrieved thereby. If this administrator, by collusion and connivance, has lifted up claims which otherwise belonged in the sixth into the fifth class, and so has practically cut out these plaintiffs from any payment from the estate, to that extent he is personally responsible, and, I take it, it matters not in what court relief is sought. It may be in the state or in the federal courts; and, as in the case of *Payne v. Hook*, the parties are not obliged to wait until the final settlement of the estate, although they could obtain remedy in the probate court by a restatement of the account on final settlement. So, on that ground, and on that ground alone, the demurrer to the bill will be overruled, and the defendant can answer by May rules.

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GAINES v. CITY OF NEW ORLEANS.<sup>1</sup>

(Circuit Court, E. D. Louisiana. March, 1886.)

1. EQUITY—PRACTICE—HOW REGULATED.

The equity practice in the courts of the United States is regulated by the laws of congress, and the rules of the supreme court of the United States made under the authority of an act of congress.

2. SAME—DEPOSIT OF FUND IN REGISTRY.

The equity practice in the United States courts requires the court, that all parties who can by possibility have an interest in the fund, except a fraction of the defendant, unite in the application, to order the deposit of a fund garnished in the registry of the court, notwithstanding that the stakeholder, who is the agent of defendant, also resists.

On Motion for an Order Requiring Funds to be Deposited in the Registry of the Court.

*Henry C. Miller*, for Louisiana National Bank, garnishee.

*Thomas J. Semmes* and *Alfred Goldthwaite*, for plaintiff.

*F. T. Nichols* and *Chas. Carroll*, for Gas-light Company.

*Walter H. Rogers*, City Atty., for defendant.

BILLINGS, J. The question submitted is whether the sum of \$40,000, on deposit with the Louisiana National Bank, shall be deposited in the registry of the court. The bank has been garnished; has no interest in the money; holds the same as the fiscal agent of the defendant. The money is claimed by the plaintiff under her writ of execution, by the gas-light company under an ordinance of the city of New Orleans, and by the board of liquidation. The plaintiff and the gas-light company unite in the motion for an order requiring the deposit.

The execution under which the money was seized issued in an equity cause. Under the practice in the courts of the state of Louis-

<sup>1</sup> Reported by Joseph P. Hornor, Esq., of the New Orleans bar.

iana such an order would not be made; under the practice of the courts of chancery such an order would be made. 3 Daniell, Ch. Pr. 1819 *et seq.*; Jeremy, Eq. Jur. 254. It is not necessary to show that the fund is in danger, but merely that the plaintiff is solely entitled, or has such an interest jointly with others as to justify him on behalf of himself and them to have the fund secured. In all equity causes the chancery rules are followed to the exclusion of state practice. In *Bein v. Heath*, 12 How. 178, TANEY, C. J., says: "The proceeding in a circuit court of the United States is regulated by the laws of congress, and the rules of this court made under the authority of an act of congress." This case holds that even by a rule of the circuit court the equity practice cannot be departed from. The conclusion, therefore, is that the equity practice is to govern, and that that practice requires the court, that all parties who can by possibility have an interest in the fund, except a fraction of the defendant, unite in the application, the court ought not to refuse to order the deposit because the stakeholder, who is the agent of the defendant, also resists.

The order will therefore be entered.

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### COFFIN and others v. CITY OF PORTLAND and another.

(Circuit Court, D. Oregon. May 12, 1886.)

#### 1. LEVEE—DEDICATION TO PUBLIC USE.

A dedication of real property to public use as a levee or landing on the bank of a navigable water implies and vests in the public a right to use the same without a grantee being named or in existence; and it rests with the legislature, as the representative of the public, to regulate such use, and to promote the same by improving the premises directly, or through the agency of the municipal corporation within whose limits the same are situated or otherwise.

#### 2. SAME—ACCEPTANCE AND CONTINUANCE OF.

No formal acceptance of such dedication is necessary; nor does the existence of such easement depend on the extent of the use or improvement of the premises, or that they are used or improved at all.

#### 3. SAME—DEDICATION FOR A "PUBLIC LEVEE."

In 1850 the occupants of the Portland land claim dedicated a strip of ground on the river, within the limits of the town they had laid out thereon, as a public levee, and so designated it on the plat of the survey. *Held*, that the intent and understanding was to dedicate the property to public use as a landing place for the use of water-craft, and the transfer of freight and passengers to and from the river.

#### 4. SAME—POWER OF THE STATE OVER DEDICATION TO PUBLIC USES.

The state may regulate the use of and improve the public landing, and authorize the collection of tolls for the maintenance of wharves and warehouses thereon, but it has no interest in the property, and cannot devote or subject it to any use clearly inconsistent with the purpose of the dedication, and if it undertakes to do so, the property is not affected by the act, nor will it thereby revert to the donor or his heirs.