

by them, after a careful consideration of the subject, have been against the one we made, and which we now overrule. See *Fales v. Chicago*, 32 Fed. Rep. 673; *Gavin v. Vance*, 33 Fed. Rep. 84; *Loomis v. Coal Co.*, Id. 353; *Railroad Co. v. Railroad Co.*, Id. 385. Motion denied.

HALSTEAD v. MANNING, BOWMAN & CO.

(Circuit Court, S. D. New York. April 13, 1888.)

COURTS—FEDERAL—OBJECTIONS TO JURISDICTION—DEMURRER.

A bill for infringement of a patent, in the circuit court for the Southern district of New York, by a citizen of that state, alleged that the defendant was a corporation of Connecticut doing business in the district. *Held*, on demurrer to the bill, for which a special appearance only had been entered, that the court had no jurisdiction; the defendant, under the act of congress of March 3, 1887, not being liable to suit outside of the district of which it was an inhabitant, except where it consents thereto, or waives its objection, or where the jurisdiction of the circuit court is invoked solely on the ground of diverse citizenship.

In Equity. Bill for infringement. On demurrer to bill.

F. W. Crocker, for complainant.

Edwin B. Smith, for respondent.

WALLACE, J. The defendant raises by demurrer to the bill of complaint the objection that this court has not jurisdiction over the person of the defendant. The bill alleges the infringement by the defendant of letters patent of the United States granted to the complainant for a new and useful improvement in stewing kettles or boilers, and also alleges that the defendant is a corporation organized under the laws of the state of Connecticut, and doing business in the Southern district of New York. Prior to the act of congress of March 3, 1887, the defendant could have been sued here, if "found" within the district, but that act has made a radical change in the former provisions of law respecting the jurisdiction of this court, and a defendant can no longer be sued outside the district of which he is an inhabitant, unless he consents, or waives his right to object, except where the jurisdiction of the circuit court is founded only on the fact that the action is between citizens of different states. The present action does not fall within that category; and, as the facts showing want of jurisdiction appear upon the face of the bill, and the defendant has not appeared generally in the action, but specially, in order to raise the objection by demurrer, the demurrer must be sustained.

GATCH *v.* FITCH *et al.*SUNMAN *v.* GATCH *et al.*

(Circuit Court, D. Indiana. February 2, 1888.)

BANKS AND BANKING—NATIONAL BANKS—INSOLVENCY—PREFERENCES BY STOCKHOLDER.

Section 2, act Cong. June 30, 1876, (19 St. at Large, p. 63,) provides that the individual liability of shareholders of an insolvent national bank, fixed by Rev. St. U. S. § 5151, "may be enforced by any creditor of such association by bill in equity in the nature of a creditors' bill brought by such creditor on behalf of himself and all other creditors." *Held*, that a mortgage of all his individual property executed by a cashier and stockholder of such bank, after it had closed its doors, to secure a depositor, amounted to a preference, and was void as against a judgment recovered against the cashier by the receiver under Rev. St. U. S. § 5151, either in the hands of the receiver or in those of a purchaser from him for value.

In Equity. On demurrer to cross-bill.

Duncan, Smith & Wilson, for cross-complainants.

The cross-bill of Sunman alleged that the City National Bank of Lawrenceburgh closed its doors on August 10, 1883, in insolvency, and never opened up for business thereafter; Walter Fitch, a defendant to the cross-bill, was its cashier, and owned \$5,000 of the stock of the bank; that defendant Gatch was a depositor in the bank at the time of its suspension in the sum of \$14,492.37; that there were a large number of creditors, and the assets of the bank were insufficient to pay its creditors in full; that on August 11th, and after the bank had suspended, Gatch, who resided in Lawrenceburgh, demanded and procured of Fitch a mortgage on all the lands owned by Fitch, to secure and protect him as such depositor; that such lands were of the value of \$4,000, and constituted all the property owned by Fitch; that Gatch knew that Fitch was such cashier and stockholder, and that this mortgage covered all the property owned by him; that there was no other property out of which an assessment by the comptroller upon Fitch as stockholder, for the benefit of the creditors of the bank, could be paid; that this mortgage was made and received for the purpose and with the intent of securing to Gatch a preference over the other creditors in the payment of his debt; that there was no consideration for this mortgage other than the debt of the bank; that in 1884 the comptroller appointed a receiver for the bank; that the receiver exhausted all the available assets of the bank, which failed to pay the creditors, and thereupon an assessment of 50 per cent. was made by the proper authorities upon all the stockholders, including Fitch; that, Fitch having failed to meet this assessment, the receiver, under instructions, instituted an action in this court against him to recover the amount, and did recover a judgment for \$2,500,—the amount of such assessment; that execution issued on this judgment, and was returned *nulla bona*; that thereupon the receiver filed his petition in this court, and, under the instructions and order of this court, sold the judgment to the cross-complainant, at public auction, at the court-house door of Dearborn county, in the city of Lawrenceburgh, after proper notice, the said cross-complainant being the highest and best bidder; that this sale was reported to the court, confirmed, and the judgment assigned to Sunman. Subsequently Gatch brought his suit in the state court to foreclose his mortgage, making Sunman a defendant. The latter procured the removal of the cause to this court, and filed