

UNION TRUST COMPANY v. WALKER.

An assignment of such claims as are mentioned in *Union Trust Company v. Souther*, ante, p. 591, passes the right of the original holder to payment out of the fund in the hands of the receiver.

APPEAL from the Circuit Court of the United States for the Southern District of Illinois.

Mr. S. Corning Judd and *Mr. William F. Whitehouse* for the appellant.

Mr. Thomas C. Fletcher for the appellee.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This case differs from *Union Trust Company v. Souther*, ante, p. 591, only in the fact that Walker, the present intervenor and appellee, is the assignee by purchase from the original holders of the claims he seeks to have paid, and one of the questions certified is whether, being an assignee and not an original holder, he is entitled to payment. We have no hesitation in answering this question in the affirmative. As was said in *Fosdick v. Schall*, 99 U. S. 235, 253, these creditors are paid not because they have in law a lien on the mortgaged property or the income, but because in equity the earnings of the company constitute a fund for the payment of the expenses which their claims represent, before any income arises which ought to be applied to the discharge of the mortgage debt. Under such circumstances, it is a matter of no importance that the original creditor has parted with the claim. The right is one that attaches to the debt and not to the person of the original creditor. Consequently the right passes with an assignment of the debt.

Decree affirmed.