

involved in adopting that course would not result in the sacrifice of any vital interest of the insolvent corporation, its creditors or its stockholders. On the showing that their interests would be adequately protected by liquidation under the direction of the Secretary of Banking, the district judge should have denied the application for the appointment of receivers or, if he had already appointed them, should have discharged the receivers, and directed the surrender of the property in their possession to the Secretary in order that the liquidation might proceed under the state statutes.

That course should be pursued now. For that purpose the decree will be reversed and the cause remanded. The district court will direct that all assets and property in the possession of the receivers be, with all convenient speed, surrendered to the Secretary of Banking, the receivers retaining only sufficient of the assets of the defendant association to pay their reasonable fees and any obligations lawfully incurred by them. Jurisdiction will be retained by the district court only for that purpose and for the purpose of promptly discharging the receivers and settling their accounts, after which the suit will be dismissed. See *Harkin v. Brundage*, *supra*, 57, 58.

*Reversed.*

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GORDON, SECRETARY OF BANKING OF PENNSYLVANIA, *v.* OMINSKY ET AL., RECEIVERS.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE  
THIRD CIRCUIT.

No. 395. Argued January 14, 1935.—Decided February 4, 1935.

Upon the authority of *Pennsylvania v. Williams*, *ante*, p. 176, held that the federal District Court for Pennsylvania had jurisdiction of a suit brought by nonresident shareholders for the appointment of receivers to liquidate an insolvent building and loan association

and for an injunction, but that, in the exercise of a proper discretion, upon the showing made by the state Secretary of Banking, it should have relinquished its jurisdiction in favor of that officer.

72 F. (2d) 517, reversed.

CERTIORARI, 293 U. S. 548, to review a decree affirming a decree of the District Court appointing permanent receivers to liquidate an insolvent building and loan association and enjoining others from interfering with the property.

*Mr. Wm. A. Schnader*, Attorney General of Pennsylvania, with whom *Mr. Harold D. Saylor*, Deputy Attorney General, was on the brief, for petitioner.

*Messrs. Oscar Brown* and *Grover C. Ladner*, with whom *Mr. Charles Polis* was on the brief, for respondents.

MR. JUSTICE STONE delivered the opinion of the Court.

This case comes here on certiorari, directed to the Court of Appeals for the Third Circuit, which was granted to resolve the questions of public importance also involved in No. 394, *Pennsylvania v. Williams*, just decided, *ante*, p. 176.

On March 31, 1933, certain citizens of New Jersey, shareholders in the Christian A. Fisher Building & Loan Association, a Pennsylvania corporation, filed their bill of complaint against the Association in the district court for eastern Pennsylvania. The bill alleged the requisite diversity of citizenship and jurisdictional amount; that the Association was insolvent; that its assets might be dissipated and sacrificed in the efforts of creditors to realize payment of their claims from its property, and prayed the appointment of receivers and an injunction. Thereafter, the Secretary of Banking, acting under the Banking Act of the Commonwealth of Pennsylvania of June 15, 1923, P. L. 809, after due hearing, found the Association

to be insolvent; and on April 8, 1933, he issued and filed his certificate, taking possession of the association and appointing a special deputy agent to assist in the liquidation of its business and property. The state Secretary of Banking, petitioner here, was substituted as defendant in the pending suit and filed an answer, in which he set up the action taken by him and prayed that the bill of complaint be dismissed. After a hearing upon bill and answer, the district judge entered his decree appointing permanent receivers, respondents here, and enjoining all persons from taking possession of, or interfering with, the property of the defendant. The decree was affirmed by the Court of Appeals for the Third Circuit. 72 F. (2d) 517.

For reasons stated at length in *Pennsylvania v. Williams, supra*, we conclude that the district court acquired jurisdiction of the cause upon the filing of the bill of complaint in that court. See also No. 431, *Penn General Casualty Co. v. Pennsylvania ex rel. Schnader, Attorney General*, decided this day, *post*, p. 189. But we think that, upon the bare showing in a shareholder's bill that the defendant corporation was insolvent, the court would have been well within the exercise of a proper discretion had it declined the appointment of receivers and directed a dismissal of the bill for want of equity. In any event, the allegations of the answer, that the possession and control of the assets of the defendant by the Secretary of Banking, pursuant to statute, will result in the preservation of the assets of the defendant and the proper distribution of funds realized from their liquidation, are not challenged. The considerations which should have induced the district court, in the proper exercise of its discretion, to relinquish jurisdiction in *Pennsylvania v. Williams, supra*, should have led to the same result here.

The decree will be reversed and the cause remanded. The district court will direct that all assets and property

in the possession of the receiver be, with all convenient speed, surrendered to the Secretary of Banking, the receivers retaining only sufficient of the assets of the defendant association to pay their reasonable fees and any obligations lawfully incurred by them. Jurisdiction will be retained by the district court only for that purpose and for the purpose of promptly discharging the receivers and settling their accounts, after which the suit will be dismissed.

*Reversed.*

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PENN GENERAL CASUALTY CO. v. PENNSYLVANIA EX REL. SCHNADER, ATTORNEY GENERAL.

CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

No. 431. Argued January 11, 14, 1935.—Decided February 4, 1935.

1. Whether, in a suit involving the possession and control of property which is the subject of a suit pending in a federal District Court, a state court has given proper effect to the proceedings and order of the federal court, is a federal question reviewable on appeal. P. 194.
2. It is an established principle, applicable to both federal and state courts, that where these courts have concurrent jurisdiction of suits in rem or quasi in rem, the court first assuming jurisdiction over the property may maintain and exercise that jurisdiction to the exclusion of the other. This is the settled rule with respect to suits in equity for the control by receivership of the assets of an insolvent corporation. P. 195.
3. When the two suits have substantially the same purpose and the jurisdiction of the courts is concurrent, that one whose jurisdiction is first invoked by the filing of the bill is treated as in constructive possession of the property and as authorized to proceed with the cause, at least where process subsequently issues in due course. P. 196.
4. The jurisdiction conferred on the federal district courts by the Constitution and laws of the United States cannot be restricted by state legislation. P. 197.