
Statement of the case.

CADLE v. BAKER.

The debtors of a National bank, when sued by a person whom the comptroller, professing to act in pursuance of the fiftieth section of the National Currency Act, has appointed to be its receiver, cannot inquire into the lawfulness of such receiver's appointment.

ERROR to the District Court for the Middle District of Alabama; the case being thus:

The forty-sixth and forty-seventh sections of the National Currency Act* provide that if any of the banks which it authorizes fail to redeem their notes, the holder may have the notes protested; and that notice of the protest shall be forwarded to the Comptroller of the Currency; that upon receiving notice of such failure to redeem, the comptroller shall send a special agent to ascertain the facts; and if, on the report of such agent, he shall be satisfied of the failure, he shall declare the securities of the bank pledged for redemption of the notes forfeited, and give notice to the note-holders to present them to him for payment.

The fiftieth section enacts that on becoming satisfied of the failure "as specified in this act," he may also appoint a receiver, who, under his direction, shall take possession of the assets of the bank and collect all debts due to it, &c.

The same section provides, however, that if the bank denies that it has failed to redeem its notes, it may apply to the nearest District Court or Territorial court to enjoin further proceedings in the premises, when, if such court, on hearing the case, shall be satisfied that there has been no failure, it may enjoin both comptroller and receiver from all further proceedings on account of such alleged refusal.

This statute being in force, the Comptroller of the Currency appointed one Cadle receiver of the First National Bank of Selma, and the said Cadle, as such receiver, brought suit in the court below against a certain Baker, to recover

* Of June 3d, 1864, 13 Stat. at Large, 113.

Opinion of the court.

the amount due upon a bill of exchange, drawn by Cadle and indorsed to the bank, and held as part of its assets at the time when Cadle was appointed receiver. The declaration contained an averment in substance that the Comptroller of the Currency having become satisfied, "as specified in the Banking Act," that the bank had refused to pay its notes, did appoint the plaintiff "a receiver as provided by the fiftieth section of the act," and that he had qualified under his appointment and entered upon the performance of his duties. The defendants demurred to the declaration, and, in effect, assigned for cause that it was not specifically averred that each and all of the several things had been done which were provided for in sections forty-six and forty-seven, in order to furnish the evidence to satisfy the comptroller that the bank had refused to pay its notes and was in default. The court below sustained the demurrer and gave judgment for the defendant. The receiver now brought the case here.

Mr. P. Phillips, for the plaintiff in error; no opposing counsel.

The CHIEF JUSTICE delivered the opinion of the court.

We think such averments as the defendant alleges to be necessary and the want of which he has assigned for cause of demurrer, were not necessary. The debtors of a bank, when sued by a receiver, cannot inquire into the legality of his appointment. It is sufficient for the purposes of such a suit that he has been appointed and is receiver in fact. As to debtors, the action of the comptroller in making the appointment is conclusive until set aside on the application of the bank. The bank may move in that behalf, but the debtor cannot. Section fifty makes express provision for a contest by the bank.

The court below erred in sustaining the demurrer, and for that reason the judgment is reversed and the cause remanded with instructions to OVERRULE the DEMURRER to the declaration and

PROCEED ACCORDINGLY.