

same property, exclusive jurisdiction for the purposes of its own suit is acquired by the court first taking possession of the *res*. And upon the same grounds, wherever property has been seized by an officer of the court by virtue of its process, the property is within the custody of the court and under its control, and no other court except one of supervisory or superior jurisdiction may rightfully interfere with that possession. *Freeman v. Howe*, 24 How. 450; *Buck v. Colbath*, 3 Wall. 334. The rule rests in comity, and is in avoidance of indecorous and injurious conflicts between courts in the administration of justice. It is not, however, a rule without limitation. It is restricted to such procedure as "invade the custody of the court over the property." *Heidritter v. Oil Cloth Co.*, *supra*; *Railroad Co. v. Gomila*, 132 U. S. 478, 10 Sup. Ct. Rep. 155. Thus the possession of property by a marshal of a court of the United States under its writ against A. is a complete defense to an action of replevin by B., the rightful owner of the property, (*Freeman v. Howe*, *supra*; *Covell v. Heyman*, *supra*;) but does not prevent an action in trespass in a state court to recover the value of the property seized, (*Buck v. Colbath*, *supra*; *Lammon v. Feusier*, 111 U. S. 17, 19, 4 Sup. Ct. Rep. 286.)

The decisions upon the effect of the pendency of a prior suit by a defendant against the garnishee establish the principles: (1) The pendency of such an action in the same court will not preclude the charging of the garnishee; (2) where the two proceedings are in courts of different jurisdiction, that which was first instituted will be sustained; (3) when the garnishee, if charged, cannot avail himself of the judgment in attachment as a bar to recovery in the prior action against him, he cannot be held as garnishee. *Drake*, *Attachm.* § 621. These principles rest in the equitable consideration that the garnishee ought not to be twice cast for the same debt. Within these principles, and by the decision in *Wallace v. McConnell*, 13 Pet. 136, the garnishees here, the suit remaining in the state court, ought not to be charged, because they could not, in the prior suit against them in this court, plead payment of judgment in attachment in satisfaction, in whole or in part, of the claim asserted against them. But does it follow that therefore the state court was without jurisdiction? I think not. The debt of the garnishees was liable to be impounded to satisfy the demand of the plaintiff. If exempt therefrom, it was only because of the prior suit. But that was a suit *in personam*. The court in which it was depending, although one of different jurisdiction, had no custody of property subject to be interfered with by the suit in the state court. If both suits were *in rem*, touching the same property, the court last asserting control would not be ousted of jurisdiction. It could proceed so far as its action would not have the effect of avoiding the jurisdiction of the court first exercising jurisdiction. *Heidritter v. Oil Cloth Co.*, *supra*. Here the one suit was to declare liability, the other to subject that liability to satisfaction of another debt. It is true that the federal court, in assertion of its rightful jurisdiction, would not permit any action of the state court in the subsequent suit to stay its hand in declaring the debt or in enforcement of satisfaction of it. But that is not

denial of jurisdiction. It is subordination of jurisdiction. It does not follow that because one court has obtained jurisdiction of the parties and the subject-matter of an action, another court of co-ordinate jurisdiction may not also acquire jurisdiction in another suit and over the same subject-matter. Thus the pendency of one suit would not abate a subsequent suit in another jurisdiction between the same parties for the same cause. *Stanton v. Embrey*, 93 U. S. 548, 554; *Insurance Co. v. Brune's Assignee*, 96 U. S. 588; *Gordon v. Gilfoil*, 99 U. S. 168, 178. It is true that here, the suits remaining in different jurisdictions, the garnishees ought not to be charged. That is a rule of decision, not of jurisdiction. It would doubtless have been proper in the state court to stay its hand until the federal court had exhausted its jurisdiction, (*Clifton v. Foster*, 103 Mass. 233,) or, proceeding, to have held the garnishee acquit within the principles stated. But it had jurisdiction to stay its proceedings; to determine the liability of the garnishee, and to determine it erroneously; and, upon discontinuance or dismissal of the suit in the federal court, to proceed to adjudge and enforce the liability of the garnishee. The whole matter rests in comity, and is not availing to destroy jurisdiction. Its exercise might be inoperative as against the defendants, however effectual it might prove through erroneous decision against the garnishee.

The removal of the suit into this court draws to it jurisdiction over the ancillary proceeding against the garnishees. *Pratt v. Albright*, 10 Biss. 511, 9 Fed. Rep. 634; *Cook v. Whitney*, 3 Woods, 715, 719. While without jurisdiction of the persons of the defendants, this court, by virtue of the removal acts, takes the jurisdiction possessed by the state court over the *res*, and may rightfully determine the liability of the garnishees. Whether, the proceeding being now removed into this court by the procurement of the defendants, and, in the language of the removal act "to proceed in the same manner as if it had been originally commenced" in this court, the plea of prior suit in this jurisdiction is longer availing, is a question not arising upon this hearing. The motion to dismiss is overruled.

WHEELWRIGHT v. ST. LOUIS, N. O. & O. CANAL & TRANSP. CO.

(Circuit Court, E. D. Louisiana. May 20, 1892.)

No. 12,034.

1. JURISDICTION OF CIRCUIT COURT—SUIT TO ENFORCE LIEN—SINGLE DEFENDANT.

Act 1875, § 8, (18 St. p. 472,) confers power on the circuit court, in any suit to enforce a lien on property within the district wherein the suit is brought, in which "one or more of the defendants therein shall not be an inhabitant of or found within the said district," to order process against such absent "defendant or defendants." *Held*, that the circuit court has jurisdiction of such a suit when the citizenship is diverse, although there is but one defendant and neither party resides within the state in which suit is brought.