

tion accrued in 1885, when the cross-tide dam was erected, more than six years before he filed his petition, and he cannot maintain his suit. It is a condition precedent to his right to sue that the cause of action accrued within six years prior to his suit. (3) That the evidence discloses no such taking of the plaintiff's land for public purposes as brings him within the fifth amendment and so entitled to compensation.

Conclusions of Law.

1. The plaintiff having his business in South Carolina, remaining in that state six months in the year, with a house in which he lives, and domestics by whom he is served, leaving during the unhealthy season for health only, is a resident of this district, and the court has jurisdiction on his claim.

2. Although the water in Savannah river was raised and thrown on the plantation when the dam was built, in 1885, the full consequences were not ascertained and realized until 1888, when the plantation was abandoned. In that year the cause of action was complete. This action, begun in 1893, is within the statutory period of six years.

3. The government has not gone into actual occupancy of this land. But by reason of this public work, occasioned by the public work fulfilling its purpose, the water in the Savannah river has been raised at plaintiff's land, has been backed on it so that the drainage has been destroyed, the water kept on the land, and forced up into it, making it finally wholly unfit for cultivation. This is a taking of the land for public purposes, for which compensation must be provided. *Pumpelly v. Green Bay Co.*, 13 Wall. 181.

4. The claimant is entitled to his damages, \$10,000. Let judgment be entered accordingly.

BLYDENSTEIN et al. v. NEW YORK SECURITY & TRUST CO.

(Circuit Court, S. D. New York. December 30, 1893.)

COURTS—FEDERAL AND STATE—CONFLICTING JURISDICTION.

It is no defense to a suit brought in a federal court by an alien to recover money from a citizen that defendant, after the commencement of the suit, has been ordered by a state court, pursuant to a state statute, to hold the money to the credit of an action pending therein, as if it were paid into court; for the federal jurisdiction cannot be thus impaired.

At Law. Action by Benjamin W. Blydenstein and others against the New York Security & Trust Company to recover money. On demurrer to a defense set up in the answer. Demurrer sustained.

Antonio Knauth, for plaintiffs.

James Byrne, for defendant.

WHEELER, District Judge. This action was brought by the plaintiffs, citizens of Great Britain and Holland, in February, 1893, against the defendant, a corporation of the state of New York, to

recover \$4,347.98 alleged to have been received by the defendant from the wrongful conversion of 38 bales of burlaps belonging to the plaintiffs. For an additional affirmative defense the defendant sets up, without alleging upon what process or procedure, that—

“On or about the 11th day of April, 1893, an order was duly entered in an action then and now pending in the supreme court of the state of New York, a court of general jurisdiction, in which action the defendant herein was plaintiff, and Lipman & Co. and many others, including these plaintiffs, were defendants. This order, among other things, directed that the defendant herein hold, as a separate fund, deposited to the credit of that action, as if the same had been paid into court, the proceeds of the sale of the 200 bales of burlaps above mentioned as having been sold. Said order is still in force, and the defendant now holds said proceeds of the sale, including the sum for which the plaintiffs herein demand judgment, deposited with it to the credit of that action as if the same had been paid into court. The defendant herein is a corporation authorized by the laws of the state of New York to act, under an order of the supreme court of New York, as a depository of moneys paid into court.”

To this defense the plaintiffs demur.

Section 743 of the Code of Civil Procedure of New York provides that “a party bringing money into court pursuant to the direction of the court is discharged thereby from all further liability to the extent of the money so paid in.” The defendant relies upon this order as constituting the payment, in effect, of the money into court, pursuant to the direction of the court, thereby amounting to a payment of the claim at common law, and to a discharge under this statute; and expressly waives reliance upon it as a judgment in favor of the plaintiffs merging their cause of action, or against them extinguishing it. This proceeding is, in argument, likened to payment to some third party on request of the plaintiffs, which would be the same as payment to the plaintiffs; but they do not show, nor allege anything amounting to, any such request. The proceeding appears to have been wholly in invitum, and to rest entirely upon the power of the court, and not upon any request or consent of the plaintiffs. It in no wise amounts to a payment at common law.

When this suit was brought, this money, upon the allegations of the plaintiffs, which, for this purpose, must be taken to be true, was in the hands of the defendant, belonging to the plaintiffs. It is, for the purpose of this suit, so now, unless the defendant could, as has been urged, in some way through the power of the state court, transfer the litigation from this court to that. With reference to a similar argument, Mr. Justice Campbell, for the court, in *Hyde v. Stone*, 20 How. 175 said:

“But this court has repeatedly decided that the jurisdiction of the courts of the United States over controversies between citizens of different states cannot be impaired by the laws of the states which prescribe the modes of redress in their courts, or which regulate the distribution of their judicial power.”

To the same effect appears to be *Railroad Co. v. Gomila*, 132 U. S. 478, 10 Sup. Ct. 155; and *Cole v. Cunningham*, 133 U. S. 107, 10 Sup. Ct. 269, which holds that the courts of a state may restrain its citizens from proceeding in the courts of another state, does not

appear to be to the contrary. The rights of the plaintiffs as citizens of foreign countries in the courts of the United States are as extensive as those of citizens of the different states in those courts, and equally without the reach of the laws of the states. 24 Stat. 552; 25 Stat. 433.

Demurrer sustained.

HAGENBECK v. HAGENBECK ZOOLOGICAL ARENA CO. et al.

(Circuit Court, N. D. Illinois. December 23, 1893.)

1. EQUITY JURISDICTION—ACCOUNTING.

Where the complainant claims from the defendant an exact sum of money, and the defendant admits that complainant is entitled to that sum, less only certain unliquidated damages, there is no ground for an accounting.

2. PLEADING—ALLEGATION OF CORPORATE INSOLVENCY.

An allegation that the assets of a corporation are insufficient to pay all its liabilities, counting its capital stock as a liability of the corporation to its stockholders, is not sufficient to show that the corporation is insolvent.

3. TRUSTS—EQUITY JURISDICTION.

Complainant agreed to furnish trained wild animals for exhibition by defendant in its arena, complainant to receive each day a certain proportion of gross receipts. *Held*, that defendant's possession of complainant's share of the receipts constituted a trust cognizable in equity.

4. TRUSTS—SUIT TO ENFORCE—RECEIVER.

In a suit to compel a trustee to account for trust funds, which he should pay over to the beneficiary, and which he retains because of an alleged claim against the beneficiary for breach of contract, it is proper to appoint a receiver to take charge of the fund.

In Equity. On motion for a receiver. Suit by Carl Hagenbeck against the Hagenbeck Zoological Arena Company and others for a receiver and an accounting. Complainant moves for a receiver. Granted.

Vocke & Healy, for complainant.

Moran, Kraus, Mayer & Stein, for defendants.

GROSSCUP, District Judge. This is a motion for the appointment of a receiver. The bill and answer, taken together, show that certain of the defendants, who subsequently incorporated the Hagenbeck Zoological Arena Company, procured a concession from the Columbian Exposition under which, upon payment of 25 per cent. of the gross receipts, they and their successors were permitted to exhibit, on the grounds of the Exposition, a show of trained animals. Subsequently, an agreement was entered into between them and Carl Hagenbeck, a citizen of Prussia, by the terms of which the defendants were to build and maintain, on the grounds of the Exposition, a suitable arena, and conduct and maintain therein a show of wild animals, and the complainant was to bring to the Exposition his trained animals, and supervise them while here, for which he was to receive, after payment of the stipulated amount to the Exposition Company, one-half of the remaining gross receipts of the show, the balance to be retained by the defendants. In accordance with this agreement, the particular terms of which