HEATON v. THATCHER.

(Circuit Court, D. Vermont. October 31, 1893.)

1. EXECUTORS AND ADMINISTRATORS — ALLOWANCE OF CLAIMS — LIMITATION— EQUITY.
   R. L. Vt. § 2125, provides that, where commissioners have been appointed to receive, examine, and adjust claims against the estate of an intestate, "all claims proper to be allowed by commissioners" shall be barred unless presented within the time limited. *Held*, that this does not apply to purely equitable claims, and hence it does not bar a suit by the receiver of a corporation to reach the avails of corporate property assigned to an intestate, contrary to law.
2. FEDERAL COURTS—JURISDICTION—DIVERSE CITIZENSHIP—STATE LAWS.
   Such provision, that claims against the estate of an intestate shall go before a state tribunal, cannot deprive parties of the right to sue on them in the circuit court of the United States, where that court has jurisdiction on the ground of diverse citizenship.

In Equity. On plea to the jurisdiction. Bill by Willis E. Heaton, receiver of the Arlington Manufacturing Company, against Charles W. Thatcher, administrator. Pleas overruled.

Chas. M. Wild, for orator.
Jas. K. Batchelder, for defendant.

WHEELER, District Judge. This bill is brought to reach avails of property of the Arlington Manufacturing Company, of which the orator is receiver, alleged to have been assigned to the defendant's intestate, contrary to the laws of New York, under which that corporation was organized, and to the laws of Vermont, where the property was situated. The defendant has pleaded the appointment of commissioners to receive, examine, and adjust all claims and demands against the estate of the intestate, and failure to present this claim within the time limited by the laws of the state after which claims are barred, and the pleas have been argued. The statute itself of the state only bars claims "proper to be allowed by commissioners." R. L. § 2125. Purely equitable claims are not such. Brown v. Sumner, 31 Vt. 671. Therefore this suit might have been brought in the proper court of equity of the state, whose equitable jurisdiction is founded upon that of the courts of chancery of England, and is similar to that of this court, if the claim is of that character; and it may be brought in this court because the parties are citizens of different states, and this court has concurrent jurisdiction. Besides this, the laws of a state cannot deprive parties of their right to proceed in the courts of the United States by providing that certain claims shall go before particular tribunals of the state. Payne v. Hook, 7 Wall. 425; Lawrence v. Nelson, 143 U. S. 215, 12 Sup. Ct. 440; Railroad Co. v. Gomila, 132 U. S. 478, 10 Sup. Ct. 155. The arrangement by which the property was transferred to the intestate would, if valid, create a trust in him, and the transaction was had through an intermediate party. An account would be necessary, and an action at law inadequate to the adjustment of these rights between these parties to this suit. Pleas overruled.

HARRISON v. HARTFORD FIRE INS. CO.

(Circuit Court, S. D. Iowa, E. D. January 27, 1894.)

1. INSURANCE—PREMATURITY OF SUIT.
Where a suit against a fire insurance company was commenced within 90 days after a waiver of proofs of loss, it will be held to be premature, and the court without jurisdiction, under the statutes of Iowa, which provide that no suit shall be begun against an insurance company within 90 days after proofs of loss have been furnished.

2. SAME—AN APPRAISEMENT AND AWARD NOT A CONDITION PRECEDENT.
Where an insurance policy provided that, in event of a disagreement as to the amount of the loss, two competent appraisers should be chosen, each party selecting one, and the two so chosen shall first select a competent umpire, and that an award in writing of any two shall determine the amount of said loss, and that no suit or action on the policy for the recovery of any claim shall be sustainable in any court of law or equity until after a full compliance by the assured with the foregoing requirements; and when the agreement for submission to appraisers provided that two persons, naming them, should act as appraisers, together with a third person to be appointed by them, if necessary to decide upon matters of difference only, and there is no evidence of any disagreement,—*held* that, such submission not being in accordance with the terms of the policy, and there being no evidence of disagreement, the appraisement and award is not a condition precedent to maintaining suit.

3. SAME—EFFECT OF ENTERING INTO AN AGREEMENT TO APPRAISE.
Where a policy of insurance provided as above stated, and the parties, in accordance therewith, voluntarily entered into a contract of appraisement, and appraisers were chosen by the parties, and duly qualified and entered upon the discharge of their duties, and, while such appraisers were endeavoring to comply with the conditions of the agreement for submission, a suit is brought by the assured, quaere, whether such agreement and part performance thereof will prevent the plaintiff from maintaining suit, or whether a suit, if begun, would be stayed until an award should be submitted.

4. SAME—ACTS OF A RECORDING AGENT.
A general local recording agent, with authority to issue and deliver policies of insurance and to collect premiums, has no authority, by virtue of such agency, to waive proofs of loss.

5. SAME—WAIVER OF PROOFS.
Where a local recording agent, with authority to issue policies of insurance and deliver them, and to collect premiums, and whose business it was to notify his company of any fire which might occur within his territory, advised his company that such a fire had occurred, and the company advised such agent that an adjuster would give the matter attention as soon as he could do so consistently with other duties, and the local agent so notified the assured, and within a few days thereafter stated to the assured that an adjuster would be there on a day named, and for the assured to get his appraiser ready, *held*, that such agent had no authority to waive proofs of loss, and, further, that the above facts did not constitute a waiver of proofs.

At Law.

This was an action brought by the plaintiff against the defendant upon a policy of insurance, New York standard form, the petition being in the usual form. The defendant, for answer, pleaded (1) a general denial; (2) prematurity of action under the Iowa statute; (3) that there was an appraisement entered into under the terms of the policy, and no award had been made at the time the suit was commenced, and that said award was a condition precedent to bringing suit; (4) that no proofs of loss had been served. The plaintiff pleaded a waiver of proofs.