

It follows, for the reasons given, that the defendant cannot be compelled to answer to a suit brought in this district, and that the bill must be dismissed for want of jurisdiction. Demurrer sustained; bill to be dismissed, with costs.

NELSON v. HUIDEKOPER et al.

(Circuit Court of Appeals, Fifth Circuit. January 9, 1895.)

No. 244.

REVIEW IN ACTIONS AT LAW — APPEAL AND WRIT OF ERROR—CIRCUIT COURTS OF APPEALS.

A judgment in an action at law (as for damages for personal injuries) is not reviewable in the circuit courts of appeals upon an appeal. The proper method is by writ of error, with citation to adverse parties.

In Error to the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

This was an action at law commenced in the city court of Birmingham, Ala., by William F. Nelson against F. W. Huidekoper and Reuben Foster, as receivers of the Richmond & Danville Railroad Company, to recover damages for personal injuries. The case was removed to the federal circuit court by the defendants, as nonresidents, on the ground of prejudice and local influence. Prior to the removal the defendants pleaded to the jurisdiction of the court, on the ground that the defendants were nonresidents of Alabama, and, as receivers, were operating the railroad of the Richmond & Danville Railroad Company, which was a foreign corporation, at the time of the injury complained of, and that the cause of action arose wholly without the territorial jurisdiction of the courts of Alabama. After the removal of the cause, the plaintiff demurred to the plea to the jurisdiction on various grounds, and, the plea and the demurrer thereto having been duly argued and submitted to the court below, the court overruled the demurrer, and, the plaintiff declining to take issue on the plea, or to proceed further, the court sustained the plea, and entered an order dismissing the case for want of jurisdiction. To obtain a review of this judgment, plaintiff, instead of suing out a writ of error, took an appeal, as stated below in the opinion of the court.

Griffith R. Harsh, for plaintiff in error.

James Weatherly and A. G. Smith, for defendants in error.

Before PARDEE and McCORMICK, Circuit Judges, and BRUCE, District Judge.

PARDEE, Circuit Judge. This was an action in the circuit court for the Southern division of the Northern district of Alabama to recover damages for personal injuries alleged to have been sustained by the plaintiff while a passenger on a train operated by defendants as receivers of the Richmond & Danville Railroad Company, and was originally commenced in the city court of Birmingham, state of Alabama, and afterwards removed to the circuit court by the defendants, as nonresidents, on the ground of prejudice and local influence. After final judgment rendered in the action, the plaintiff, by his attorneys, in open court, and in the presence of the attorney for the defendants, prayed an appeal from the judgment of the court, which was granted upon the plaintiff giving a bond for costs in the sum of \$300, with good and sufficient

sureties, to be approved by the clerk of the court. On the same day the order of appeal was granted plaintiff lodged with the clerk an assignment of errors, and soon thereafter an appeal bond, which was approved by the clerk of the court. The bond in question shows other illegalities and informalities not necessary to notice. The record does not show that any writ of error has ever been applied for or allowed or issued, or that any citation to adverse parties had been issued. The motion to dismiss the case for want of jurisdiction must be granted. *Ward v. Gregory*, 7 Pet. 633; *Parish v. Ellis*, 16 Pet. 451. So ordered.

ADAMS v. MERCANTILE TRUST CO. et al.

(Circuit Court of Appeals, Fifth Circuit. February 5, 1895.)

No. 329.

1. COURTS—COMITY—POSSESSION OF RECEIVERS.

In 1893 one B. filed a bill in a state court, in behalf of himself and all other creditors, against the J. Ry. Co., to which the M. Trust Co., trustee of a mortgage upon the railway, was also made a party, in which bill he claimed a first lien upon the property of the railway company; alleged its insolvency, and the existence of numerous other liens on its property; and sought the appointment of a receiver and a sale of the road for the payment of liens. In September, 1893, the state court appointed a receiver of the railway, who, later in the same month, was discharged, by consent of parties. On November 17, 1893, a decree pro confesso was taken against the M. Trust Co. On March 6, 1894, after hearing on the answer of the railway company, the state court made a decree granting the prayer of the bill, and sending the case to a master to take an account of the indebtedness. On March 19, 1894, the M. Trust Co. filed its bill in the federal court for foreclosure of its mortgage on the J. Ry. Co.; and on the same day, on consent of the railway company, a receiver of its property was appointed by the federal court, who took possession of the road. On April 5, 1894, the state court again appointed one A. receiver of the railroad property in the suit brought by B. On May 7th, a decree pro confesso was entered against the railway company in the M. Trust Co.'s suit in the federal court. May 21st, A. filed his intervening petition in the federal court, seeking delivery to him, as receiver in B.'s suit, of the property then in the hands of the receiver of the federal court. *Held* that, as a matter of comity between the state and federal courts, the application should be granted, and the possession of the property, which was clearly necessary to the exercise of its jurisdiction, should be turned over to the state court.

2. SAME—EXCLUSIVE JURISDICTION OF PROPERTY—NECESSITY OF SEIZURE.

It seems that actual seizure is not always necessary in order to give exclusive jurisdiction over property to a court in which a suit affecting such property is pending, if possession of such property is necessary in order to give the full relief sought in such suit. *Wilmer v. Railroad Co.*, Fed. Cas. No. 17,775, 2 Woods, 409-427, criticised.

This is an appeal from an order of the circuit court of the United States for the Northern district of Florida. The facts in this case are substantially as follows:

On the 19th of March, 1894, the Mercantile Trust Company, the appellee in this case, filed its bill in equity in the court below against the Jacksonville, Mayport & Pablo Railway & Navigation Company. This bill set forth that the said railroad company had issued 250 bonds, and executed a mortgage to the appellee, to secure the payment of these bonds, upon its entire line of