

to have acquiesced in it. "Members of private societies and associations must exhaust the remedies given them by the rules of the society before appealing to the courts for relief." *Jeane v. Grand Lodge* (Me.) 30 Atl. 70. The decided weight of authority is that a member of a mutual benefit society must resort for the correction of an alleged wrong done to him as such member to the tribunals of the society, and, when the proceedings are regular, the action of the society is conclusive, and cannot be inquired into collaterally. *State v. Grand Lodge* (N. J. Sup.) 22 Atl. 63. The method of suspension or expulsion, as provided by the laws and rules of the society, must be strictly complied with. But if the suspension is irregular and illegal (which we do not find to have been the case here) the remedy for such irregular and illegal suspension is a writ of mandamus. *State v. Grand Lodge*, supra; 5 Am. & Eng. Enc. Law, 688, 689, and note; *Society v. Weatherly*, 75 Ala. 248. As said by the supreme court of Maine in the case of *Jeane v. Grand Lodge*, supra:

"It is just and reasonable to hold that when a member of such society has a remedy, under the rules of his order, from any supposed erroneous action injurious to himself, he should first exhaust that remedy, before appealing to the courts for relief. It is quite apparent that the efficiency of such organizations cannot be maintained if a member may, at his pleasure, remove such controversies into the civil courts, to the exclusion of the tribunals which have been established for their adjudication."

The court erred in instructing the jury to find for the plaintiff, and in refusing to charge them to return a verdict for the defendant. The judgment is therefore reversed, and the cause remanded. Reversed and remanded.

HUPFELD v. AUTOMATON PIANO CO. et al.

(Circuit Court, S. D. New York. April 6, 1895.)

1. FOREIGN CORPORATION—ALIEN PLAINTIFF—APPEARANCE—JURISDICTION.

The complainant, an alien, brought suit against the defendant company, a foreign corporation, and joined with it as defendant a resident ancillary receiver of said company, to restrain the infringement of a patent. No notice of appearance was filed by the defendants, but they applied to the court, and obtained an extension of time to plead, answer, demur, or take such other action as might be advised. On motion to dismiss the complaint as against the corporation on the ground of want of jurisdiction, *held*, that the obtaining of such extension of time was the equivalent of a general appearance.

2. RECEIVER—JURISDICTION.

The suit against the receiver was being prosecuted without the consent of the state court appointing the receiver. *Held*, that the general rule that a court will not entertain jurisdiction of a suit against a receiver appointed by another court until the appointing court has given its consent, does not apply when the jurisdiction of the court in which the receiver is sued is conferred by federal laws, and when such jurisdiction is exclusive.

3. JURISDICTION IN PATENT CASES.

In a suit by the owner of a patent to restrain the infringement of the same by a receiver, the federal courts will entertain jurisdiction of such suit, without leave of the state court first obtained, to enjoin individuals, even though they be officers of a state court, from acts of infringement.

This is an action by Ludwig Hupfeld against the Automaton Piano Company and Abram B. De Frece, as receiver of said company, to restrain the infringement of a patent.

Goepel & Raeger (Thomas M. Rowlette, of counsel), for complainant.

S. O. Edmonds, for defendants.

LACOMBE, Circuit Judge. This is a bill in equity for infringement of United States letters patent No. 429,419, with the usual averments. Complainant is an alien, the defendant piano company is a New Jersey corporation, and the defendant De Frece a citizen of the state of New York, and an inhabitant of the Southern district thereof. The present motion is to set aside the service of the subpoena ad respondendum, and to dismiss the bill on the ground that this court has not jurisdiction of the defendants, or either of them. The defendant piano company has obtained extension of time to plead, answer, demur, or take such other action as it may be advised. This is the equivalent of a general appearance, and the motion to dismiss, as to it, is therefore denied. The defendant De Frece was appointed receiver of the defendant corporation by the chancery court of New Jersey, and subsequently was appointed ancillary receiver by the supreme court of this state. Motion to dismiss as to him is made upon the ground that complainant has not obtained leave to sue him from either of the courts appointing him. Leave was obtained from the New York court, but the order giving it has since been vacated. The general rule undoubtedly is that a court will not entertain jurisdiction of a suit against a receiver appointed by another court until the appointing court has given its consent that he be sued. This rule rests on principles of comity, and is considered essential for the protection of the receiver as an officer of the court appointing him against unnecessary and expensive litigation touching controversies wherein it may often be within the power of the appointing court to give ample relief to any person aggrieved. But the rule has its qualifications, and the case at bar does not fall within it. This suit is one under the federal laws, involving questions as to the validity and infringement of United States letters patent, which the state courts have no jurisdiction to determine. *Store Service Co. v. Clark*, 100 N. Y. 370, 3 N. E. 335. The federal courts cannot assent to the proposition that they have no jurisdiction, without leave of the state courts first obtained, to enjoin individuals, even though they be officers of state courts, from infringing upon the rights of the owner of a patent. To do so would be to abdicate functions which, under the federal constitution, are confided to them, and to them exclusively, by the federal laws. Such a refusal would leave it within the power of the state courts to exclude the holder of rights granted to him by the United States from the only tribunals which have jurisdiction to vindicate those rights. The reasoning in *Barron v. Burnside*, 121 U. S. 186, 7 Sup. Ct. 931, and other similar authorities applies perfectly to such a case as this. The motion is denied.

PULLMAN'S PALACE-CAR CO. v. WASHBURN.

(Circuit Court, D. Massachusetts. March 8, 1895.)

No. 336.

1. INDORSEMENT OF WRIT—MASSACHUSETTS STATUTE — COSTS AFTER REMOVAL TO FEDERAL COURT.

A statute of Massachusetts (Pub. St. c. 161, § 24) provides that "original writs, * * * in which the plaintiff is not an inhabitant of the commonwealth, shall, before entry thereof, be indorsed by some sufficient person who is such inhabitant," who shall be liable for costs. *Held*, that the indorser of a writ, under this statute, is liable for costs incurred in a federal court after removal to it of a suit commenced in a state court, as well as for the costs in the state court.

2. FEDERAL COURTS—JURISDICTION—ANCILLARY PROCEEDINGS.

Held, further, that a writ of scire facias to enforce, against such indorser of a writ, a liability for costs under a judgment of a federal court, is not an original but an ancillary proceeding, of which the federal courts have jurisdiction without regard to the citizenship of the parties or the amount in controversy.

3. JUDGMENTS—COLLATERAL ATTACK.

A judgment, rendered in a federal court, in an action removed from a state court, cannot be collaterally attacked for want of proper jurisdictional allegations in the petition for removal.

4. SAME.

A judgment cannot be collaterally attacked merely because erroneous and voidable on a writ of error as between the parties to it.

5. SAME—PRIVIES.

The indorser of a writ is privy to a judgment against the plaintiff in such writ, and cannot, upon scire facias against him, dispute the validity of such judgment.

This was a writ of scire facias sued out by the Pullman's Palace-Car Company against Frank L. Washburn to enforce against him a liability for costs as indorser of the writ in an action brought against the Pullman's Palace-Car Company by one Maggie M. Harrison, in which a judgment had been rendered against the plaintiff for \$813.94, costs.

Johnson & Underwood, for plaintiff.
Freedom Hutchinson, for defendant.

PUTNAM, Circuit Judge. The pith of the statute by virtue of which the indorsement of the writ in the original cause was made by the defendant in this suit, as found in Public Statutes of Massachusetts (chapter 161, § 24), is as follows:

"Original writs, * * * in which the plaintiff is not an inhabitant of the commonwealth, shall, before entry thereof, be indorsed by some sufficient person who is such inhabitant. * * * Every indorser, in case of avoidance or inability of the plaintiff, shall be liable to pay all costs awarded against the plaintiff, if the suit therefor is commenced within one year after the original judgment."

The present suit is by scire facias, issued out of this court against the indorser. The original writ was brought in the state court, and removed to this court on the petition of the Pullman's Palace-Car Company, the present plaintiff, and defendant in the original suit. The petition for the removal was filed in the state