SMITH v. SARGENT MANUF'G CO.

(Circuit Court, S. D. New York. May 18, 1895.)

COURTS—JURISDICTION IN PATENT CASES—WHERE SUIT MAY BE BROUGHT.

The provision in the judiciary act of 1887, as amended in 1888 (25 Stat. 433), requiring suits to be brought in the district of defendant's residence, does not apply to suits for infringement of a patent, and such suits may be brought wherever personal service can be had. In re Hohorst, 14 Sup. Ct. 221, 150 U. S. 653, followed.

This was an action at law by Herbert S. Smith against the Sargent Manufacturing Company for alleged infringement of a patent. Defendant demurs to the complaint for want of jurisdiction.

Thomas M. Wyatt, for plaintiff.
Francis Forbes, for defendant.

WHEELER, District Judge. The plaintiff is a citizen of New York; the defendant is a corporation and citizen of Michigan; and the suit is brought for an alleged infringement in this district of letters patent of the United States No. 185,193, issued to the plaintiff for an improvement in wheeled chairs, and therefore arises under the patent-right laws of the United States. The defendant has demurred to the complaint, assigning for cause want of jurisdiction "of the person of the defendant," because the suit is brought in another district than that whereof the defendant is an inhabitant. The act of 1887, as amended in 1888 (25 Stat. 433), is relied upon to support this demurrer. The circuit courts of the United States had exclusive jurisdiction of cases arising under the patent laws long before the act of 1887; and before the act of 1875 the district courts had exclusive jurisdiction of all suits for penalties and forfeitures incurred under the laws of the United States. Act Feb. 15, 1819 (Story's Laws U. S. 1719); Act July 4, 1836, § 17 (5 Stat. 119); Rev. St. U. S. § 563, cl. 3; Id. § 629, cl. 9; Id. § 711, cls. 3, 5. These suits could be brought in any district where personal service could be made upon the defendant. Chaffee v. Hayward, 20 How. 208. The general words of the act of 1875 would have given the circuit court jurisdiction of suits for penalties and forfeitures of which the district court before had exclusive jurisdiction, but the supreme court held that this special jurisdiction of the district court was not included in these general words. U. S. v. Mooney, 116 U. S. 104, 6 Sup. Ct. 304. In the same way, suits under this special jurisdiction of the circuit courts in patent cases would be included by the general words of the act of 1887, as to where suits should be brought, but the supreme court has said that suits under this special and exclusive jurisdiction of the circuit were not included by these general words. In re Hohorst, 150 U. S. 653, 14 Sup. Ct. 221. This decision and this saying of the supreme court seem to be sufficient for overruling the demurrer in this case now. Demurrer overruled.

HATCH v. BANCROFT-THOMPSON CO. et al.

(Circuit Court, E. D. Michigan. May 10, 1895.)

No. 3,354.

1. EQUITY PRACTICE—PLEA SUPPORTED BY ANSWER—EQUITY RULES.
The only method by which complainant may test the sufficiency of a plea, or, if its sufficiency be conceded, the truth of its averments, is that provided by equity rule 33, and consists either in setting down the plea to be argued, or in taking issue upon it as to the facts; and where a plea in bar is supported by answer, as provided by equity rule 32, complainant cannot properly except to the answer for insufficiency, and at the same time move to quash the plea; and, if he does so, it must be held that, by excepting to the answer, he admits the validity of the plea.

2. EQUITY PLEADING—EXCEPTIONS TO ANSWER—RULE 39.
Under equity rule 39, an answer in support of a plea in bar is not subject to exception because it fails to answer all the specific interrogatories attached to the bill.

3. STATE AND FEDERAL COURTS—COMITY—CREDITORS' BILLS.
Under the Michigan statutes relating to creditors' bills (How. Ann. St. §§ 6614–6618), and conferring upon the state circuit courts certain powers in respect to corporations (chapter 281, §§ 8148–8173), as construed by the state courts (Turnbull v. Lumber Co., 21 N. W. 375, 55 Mich. 387, and Bank of Montreal v. J. E. Potts Salt & Lumber Co., 51 N. W. 512, 90 Mich. 345), a creditor who has procured a judgment in a federal court against a corporation is entitled to intervene on a footing of equality in a creditor's suit pending in a state court; and, after jurisdiction has fully vested in the state court, a federal court will refuse, on the ground of comity, to proceed on a bill subsequently filed by such creditor, to procure the same relief as that prayed in the state court, and will take such action as will leave complainant free to resort to the state court, or will stay its hand until that litigation is ended.

This was a creditors' bill brought by Edward P. Hatch, doing business under the firm name and style of Lord & Taylor, against the Bancroft-Thompson Company, Frederick A. Bancroft, John W. Thompson, Charles R. Hawley, William Butler, Lawrence E. Christopher, Benjamin M. Hawley, Joseph W. Fitzgerald, and John L. Bassingthwait. The case was heard upon exceptions to the answer, and also upon a motion to quash the plea.

The bill of complaint in this cause was filed on the 4th day of September, 1893, and shows that the complainant, who is a citizen of the state of New York, obtained a judgment against the Bancroft-Thompson Company, a corporation organized under the laws of the state of Michigan, in this court, on the law side thereof, June 28, 1893, for $2,575.43, and costs, taxed at $31.45, on which judgment an execution was duly issued, and placed in the hands of the marshal of this district for collection. Said writ of execution was duly returned August 25, 1893, by the marshal, wholly unsatisfied. The judgment remains in full force and effect, wholly unpaid, and there is still due the complainant thereon the full amount thereof, with interest and costs. The purpose of the bill is to reach, in favor of the judgment creditor, equitable assets of the Bancroft-Thompson Company, and compel the discovery of concealed property and assets, and for other and incidental relief. The defendants named in the bill are the corporation, and its officers and stockholders, who, it is charged, have bought property of the corporation defendant, and a part of the relief sought is that these persons pay money into the company, which shall be applied to the satisfaction of complainant's claim. The gravamen of the bill is alleged frauds committed by defendants, which may be summarized briefly, as follows: (1) A fraudulent organization of the