

the contrary on the circuit may be found, and the sufficiency of such a plea was apparently assumed, without being decided, in *Watson v. Jones*, 13 Wall. 679. While the pendency of the suit in the state court is not a good plea, the same result is practically accomplished in cases of concurrent jurisdiction by the rule of comity stated in *Watson v. Jones*, and again enunciated in cases like *Railroad Co. v. Gomila*, 132 U. S. 478, 10 Sup. Ct. 155, and *Shields v. Coleman*, 157 U. S. 168, 15 Sup. Ct. 570, particularly where embarrassment would arise. The court first acquiring jurisdiction is allowed, by such comity, to proceed in an orderly way until the suit is finally disposed of, especially where the state court has appointed a receiver, as in this case. But the removal act provides that, when the suit is removed into this court, "the cause shall then proceed in the same manner as if it had been originally commenced in the said circuit court." 24 Stat. 554. The court cannot allow two suits having the same object, and between the same parties really interested, to be carried on at the same time in such court. Upon the record before me, I think that jurisdiction first attached in the state court. It may be that the defendants, by appearing and making application for a removal of the cause into this court, have conceded this point. While the second bill seeks relief to a slight extent which might not be had under the first bill, there is no such difference as to justify two independent suits. The plaintiff in the suit originally instituted in this court may dismiss the same, with liberty to file a cross bill in the first suit, if so advised, unless, by consent, the present bill shall be treated as a cross bill in that cause; otherwise, counsel for the plaintiff in the first suit may file a plea to the original suit herein, setting up the pendency of the former suit, which plea will constitute a good defense, as both are cases in equity. *Watson v. Jones*, 13 Wall. 679; *The Haytian Republic*, 154 U. S. 124, 14 Sup. Ct. 992; 2 *Daniell*, Ch. Prac. (6th Ed.) 633; *Story*, Eq. Pl. (10th Ed.) § 743.

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STATE OF WASHINGTON v. NORTHERN PAC. R. CO. et al.

(Circuit Court, D. Washington, W. D. July 29, 1896.)

FEDERAL COURTS—JURISDICTION—ANCILLARY SUITS.

When a federal court, by the appointment of a receiver, has assumed exclusive control of the operation and management of a railroad, any suit or action against such receiver, in his official capacity, and intended to affect the operation or business of the railroad, must be regarded as subordinate and ancillary to the suit in which such receiver was appointed, and, as such, within the jurisdiction of the federal court, and removable thereto, if commenced in a state court. So held of a proceeding to require the receiver, by mandamus, to comply with a state statute requiring the weighing of cars loaded with lumber.

James A. Haight, Asst. Atty. Gen., for the State.  
Ashton & Chapman, for respondents.

HANFORD, District Judge. The state of Washington, by its attorney general, brought this action for a writ of mandate against the Northern Pacific Railroad Company and Andrew F. Burleigh,

receiver of said company, under an appointment from this court, to compel compliance on the part of the respondents with the requirements of a law of the state of Washington, enacted in the year 1895, imposing upon all trans-continental railroads running in this state a duty to construct scales capable of weighing cars loaded with lumber or shingles, and providing that all lumber and shingles to be shipped beyond the limits of this state by railroad shall first be weighed by an official weigher, to be appointed by the governor, and providing that said official weigher shall receive and collect from the railroad the sum of 50 cents per car for each and every car of lumber or shingles weighed by him. Laws Wash. 1895, p. 380. The action was commenced in the superior court of the state of Washington for Thurston county, and has been removed into this court by the defendants. The attorney general has moved to remand the case, on the ground that this court has not jurisdiction thereof, for the reason, as he alleges, that the action is not a civil action, and there is not a sufficient amount involved to give the court jurisdiction.

This action is against a receiver appointed by this court, and its object is to obtain process by which to control, to a certain extent, his official conduct in the operation of the railroad business intrusted to him. This court, by its order appointing a receiver, has assumed exclusive control of the operation and management of that portion of the Northern Pacific Railroad situated within this state. Therefore any suit or action against the receiver in his official capacity, and intended to regulate or affect the operation or business of the railroad, must be regarded as subordinate and ancillary to the suit in this court in which the receiver was appointed, and all such ancillary suits are within the jurisdiction of this court, and removable if commenced in a state court. In all such ancillary suits the jurisdiction of a circuit court of the United States, and the right of removal rest upon the same ground as in the main case in which jurisdiction has been acquired. This is upon the theory that, complete jurisdiction having been acquired by taking into custody the assets of an insolvent corporation, a court of chancery necessarily draws to itself jurisdiction of any other suit by or against its receiver in the course of winding up the business of such corporation. *White v. Ewing*, 159 U. S. 36-40, 15 Sup. Ct. 1018. Motion to remand denied.

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NOONAN v. CHESTER PARK ATHLETIC CLUB CO. et al.

(Circuit Court, S. D. Ohio, W. D. June 23, 1896.)

No. 4,891.

FEDERAL COURTS—JURISDICTION IN PATENT CASES—RESIDENCE OF PARTIES.

In patent cases it is no objection to the jurisdiction that one of the defendants is a citizen of another state and district than that in which the suit is brought. In *re Hohorst*, 14 Sup. Ct. 221, 150 U. S. 653; In *re Keasbey & Mattison Co.*, 16 Sup. Ct. 273, 160 U. S. 221, and *Consolidated Fastener Co. v. Columbian Fastener Co.*, 73 Fed. 828, followed.