

nounced has been adhered to and applied in several other cases. *Chappell v. Waterworth*, 155 U. S. 102, 15 Sup. Ct. 34; *Postal Tel. Cable Co. v. State of Alabama*, 155 U. S. 482, 15 Sup. Ct. 192; *Railroad Co. v. Skottowe*, 162 U. S. 490, 16 Sup. Ct. 869; *St. Paul, M. & M. Ry. Co. v. St. Paul & N. P. Ry. Co.*, 32 U. S. App. 372, 15 C. C. A. 167, and 68 Fed. 2. The case in question must therefore be regarded as establishing a rule of decision which no inferior federal court can ignore.

Applying the doctrine in question to the case in hand, it is evident that the case was not removable to the federal circuit court. The state of Kansas based its right to relief exclusively on the act of the legislature of that state which was passed in 1891. It asserted no right, title, privilege, claim, or immunity under the constitution, laws, or treaties of the United States. The declaration filed by the state does show that, owing to the character of the property involved, the defendant company may, and probably will, interpose a defense to the suit, founded upon the provisions of certain federal statutes, to wit, the act of congress of March 3, 1863 (12 Stat. 772, c. 98), and article 6 of the federal constitution; but whether it will assert such defenses or not remains to be seen. These defenses are not yet presented in such a form that the judicial power is capable of acting on them, and they may be waived when a plea to the declaration is interposed.

To fully subserve the purpose of their creation, the federal courts, when appealed to for relief, should invariably exercise and uphold the jurisdiction with which they have been clearly vested; but they ought not to usurp a jurisdiction which does not of right belong to them, by a strained construction of existing laws or judicial decisions. I concur with Judge FOSTER that the case at bar should be remanded to the state court, and it should be remanded to that court in the condition in which it was received. If any orders have been made while the case was pending in this forum, they should be vacated before the order of remand is entered.

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BOSTON & M. R. R. et al. v. SLOCUM et al.

(Circuit Court, S. D. New York, November 5, 1896.)

**FEDERAL COURTS—EFFECT OF STATE STATUTES.**

The federal courts, in administering equitable relief, are not bound by any restrictions prescribed by the local laws for state courts; but, where the local laws give any enlargement of rights, a nonresident creditor, suing in a federal court, may have the benefit of it. Accordingly, *held*, that a simple contract creditor of a deceased person is entitled, in a suit in a federal court, to the benefit of the New York statute of April 4, 1786, giving such creditors a right of recourse against heirs and devisees of the decedent, but is not bound to conform to the subsequent statute requiring suits in such cases to be brought against all heirs or devisees jointly.

This was a suit by the Boston & Maine Railroad and others against Henry W. Slocum and others. The case was heard upon a plea to the jurisdiction.

Joins, Kidder & Melcher, for complainants.

Hornblower, Byrne, Taylor & Miller, for defendant Slocum.

WALLACE, Circuit Judge. Assuming the facts set forth in the plea to be true, as must be done, because the plea has been set down for argument, the bill of complaint is to be considered as though the action were brought against Henry W. Slocum alone, to recover from him, as a devisee and legatee under the will of his father, to the extent of the assets which have come to his hands, upon a simple contract debt of the testator; the estate of the testator having been administered, and the executors thereof discharged by the probate court of the state of New York having jurisdiction thereof, before the rights of the complainants matured. The question raised by the plea is whether the cause can be adjudicated as to this defendant in the absence of his co-devisees and co-legatees, who are not made parties because they are non-residents of the district in which the suit is brought, and are not amenable to service of process. The defendant relies upon the state statute which provides that an action to enforce the liability of a devisee for a debt of the testator shall be brought against all devisees jointly. Code, § 1846. If this statute were controlling upon this court, inasmuch as the bill seeks to recover against the defendant, not only as a devisee, but also as a legatee, and no such objection applies to a case against a legatee, the plea would have to be overruled. But the statute does not control. The federal courts administer equitable relief, between parties whose citizenship gives them jurisdiction, according to the general principles and practice of courts of equity, unembarrassed by restrictions which local laws may prescribe for state courts. If, however, an enlargement of rights is given by the laws of a state, a nonresident creditor may have the benefit of it in a federal court.

In New York, as in nearly all the other states of the Union, the old rule of the common law, by which heirs and devisees were relieved from liability for the simple contract debts of the ancestor or testator, has been abrogated; and since the statute of April 4, 1786, creditors in New York have had their remedy in equity. This remedy, when invoked by suitors in a federal court, must be enforced according to the usual course of practice and procedure in such court. For many years after the statute of 1786, the action was maintainable in the state courts of New York against one devisee to recover his proportionate part of the testator's debt; and, though it may be more convenient to proceed by a joint action against all, it is not apparent how injustice can result by proceeding against one of several, if the recovery is thus limited. As the other devisees are not amenable to the service of process, the complainant would be wholly defeated if he should not be allowed to proceed against the defendant served.

The plea is overruled.

## HASTINGS et al. v. MANHATTAN TRUST CO.

(Circuit Court of Appeals, Eighth Circuit. November 9, 1896.)

No. 752.

## MORTGAGES—ASSIGNMENT AND FORECLOSURE.

The G. Co. was a corporation engaged in the business of making loans upon mortgage. The R. Co. was a corporation organized by the same persons and having the same officers as the G. Co., and closely associated with it. The G. Co. made a loan to one H., and took from him a note, secured by mortgage, which was subsequently, after default in payment, passed backward and forward several times between the two corporations, by transactions which were made to appear upon the books to be actual sales and purchases of the note and mortgage, and of certain other notes, given by H. during the transactions, but no actual money passed upon any of the transfers. The mortgage was finally foreclosed by the R. Co., and the land bought in by it. After this sale, the G. Co. made an apparent purchase of the mortgage, and transferred it, as a valid security, to the M. Trust Co., as security for debentures of the G. Co. The G. Co. having become insolvent, the M. Trust Co. brought suit against all the parties to have the legal title to the land vested in it. It was found from the evidence that the R. Co. was organized for the purpose of taking care of defaulted mortgages of the G. Co., to avoid the necessity of many foreclosures in its name; that the R. Co. never had any bona fide interest in the mortgage or the land, but acted merely for the benefit of the G. Co. Accordingly, *held*, that as the G. Co., at the time of the transfer of the mortgage to the M. Trust Co., was the equitable owner of the land, the effect of the transfer was to vest in the M. Trust Co. all its interest therein, and the latter company was entitled to obtain the legal title to the land from the R. Co.

Appeal from the Circuit Court of the United States for the District of Minnesota.

Charles A. Willard, for appellants.

Arthur M. Keith and Frank B. Kellogg, for appellee.

Before CALDWELL, SANBORN, and THAYER, Circuit Judges.

THAYER, Circuit Judge. This suit was brought by the Manhattan Trust Company, the appellee, against the Minneapolis Realty Company, hereafter termed the "Realty Company," and A. W. Hastings, the assignee of the realty company, who are the appellants; also, against the Northwestern Guaranty Loan Company, hereafter termed the "Guaranty Company," the Minneapolis Trust Company, as assignee of the guaranty company, and against Francis B. Hart and Imogene L. Hart,—for the purpose of divesting the legal title to certain lands out of the said A. W. Hastings, as assignee, and vesting the same in the Manhattan Trust Company. The circuit court of the United States for the district of Minnesota, where the case originated, granted the relief prayed for, and two of the defendants below, to wit, A. W. Hastings, as assignee, and the Minneapolis Realty Company, have appealed.

The undisputed facts disclosed by the record are these: On September 1, 1890, Francis B. Hart and Imogene L. Hart, his wife, mortgaged the tract of land to which the litigation relates, to the aforesaid guaranty company, to secure the repayment of the sum of \$17,085, which was loaned to them by said company for a period of