

that thereby this court has the jurisdiction to order a sale of the property, to marshal the proceeds, and to settle the priority of liens on the property, does not defeat the lawful jurisdiction of the state court to hear and determine the question whether the street-railway company is indebted to the complainant city for taxes, special or general, and to decree the amount thereof, because this may be done without interfering with the possession of the property in this court, and without producing a conflict between the process of the courts. The situation in this case is fairly illustrated by the facts in the case of *Byers v. McAuley*, 149 U. S. 608, 13 Sup. Ct. 906, in which it was held that an administrator appointed by a state court is an officer of the court, and his possession of the property belonging to the defendant's estate brings it into the possession of the court, and such possession cannot be disturbed by a proceeding brought in, or process issued from, a federal court; but that a creditor, if he be a citizen of a state other than that of the citizenship of the administrator, and the amount exceeds \$2,000, exclusive of costs and interest, may proceed against the administrator in a federal court for the purpose of establishing his claim against the estate, but when he seeks payment of the claim thus established he must apply to the court of administration. In the course of the opinion in that case Mr. Justice Brewer, speaking for the court, uses the following language:

"While the validity of the claim against the receiver may be established in the state court, the administration of the property in the hands of the receiver remains with the federal court, whose officer he is, and the amount the claimant will receive from the proceeds of the property in the hands of the receiver is not settled by the state court, which only determines the validity and extent of the demand, but rests upon the result of the administration, as ordered by the federal court."

Applying these principles to the case now under consideration, it must be held that the district court of Lancaster county has full jurisdiction to adjudicate the question whether the street-railway company is indebted to the complainant upon any of the matters alleged in the bill, and to decree the amount of such indebtedness, if any exists; and that, as this question is not dependent upon any provision of the constitution or laws of the United States, the case is not one removable into this court under the provisions of the acts of congress of 1887-88.

Motion to remand sustained.

FIRST NAT. BANK OF CHICAGO v. STEINWAY et al.

(Circuit Court, W. D. Pennsylvania. December 28, 1896.)

No. 15.

FEDERAL JURISDICTION—CREDITORS' BILL—STATE JUDGMENT.

A federal court has jurisdiction of a creditors' bill between citizens of different states, though based upon the judgment of a state court, and notwithstanding the existence of statutory legal remedies in the state courts.

This was a creditors' bill by the First National Bank of Chicago against William Steinway & Sons and others. The cause was heard on demurrer to the bill.

John Wilson, for plaintiff.

Cohen & Israel and Knox & Reed, for defendants.

Before ACHESON, Circuit Judge, and BUFFINGTON, District Judge.

ACHESON, Circuit Judge. In *Tube Works Co. v. Ballou*, 146 U. S. 517, 523, 13 Sup. Ct. 165, 166, the supreme court said:

"Where it is sought by equitable process to reach equitable interests of a debtor, the bill, unless otherwise provided by statute, must set forth a judgment in the jurisdiction where the suit in equity is brought, the issuing of an execution thereon, and its return unsatisfied, or must make allegations showing that it is impossible to obtain such a judgment in any court within such jurisdiction."

The bill here conforms to these requirements, for it sets forth a judgment obtained in the court of common pleas No. 2 of Allegheny county, Pa., a writ of fieri facias issued thereon against the defendants therein, and a return of nulla bona. This is a creditors' bill in the usual form, between citizens of different states, to reach equitable assets, and the amount in controversy is sufficient to sustain the jurisdiction of this court. In our opinion the objection that the bill is not maintainable because based upon a judgment of a state court is not tenable. *Putman v. New Albany*, 4 Biss. 365, Fed. Cas. No. 11, 481; *Wilkinson v. Yale*, 6 McLean, 16, 18, Fed. Cas. No. 17,678; *Gorell v. Dickson*, 26 Fed. 454; *Buckeye Engine Co. v. Donau Brewing Co.*, 47 Fed. 6; *Tube Works Co. v. Ballou*, supra; *Owens v. Gotzian*, 4 Dill. 436, Fed. Cas. No. 10,634. Nor can we sustain the other ground of demurrer raised to our jurisdiction, namely, that statutory legal remedies are open to the plaintiff in the courts of Pennsylvania. The equity jurisdiction of the circuit court of the United States cannot be taken away or diminished by state legislation. *Barber v. Barber*, 21 How. 582, 592. In *Mississippi Mills v. Cohn*, 150 U. S. 202, 14 Sup. Ct. 75, it was distinctly held that a creditors' bill to subject property of the debtor fraudulently standing in the name of a third party to the payment of judgments against the debtor is within the jurisdiction of a federal court, sitting as a court of equity, although, in the courts of the state in which the federal court sits, state legislation may have given the creditor a remedy at law.

The demurrers are overruled, with leave to the defendants to answer the bill within 30 days from this date.

BUFFINGTON, J., concurs.

PICKHAM v. WHEELER-BLISS MANUF'G CO.

(Circuit Court of Appeals, Seventh Circuit. January 4, 1897.)

No. 312.

1. FEDERAL COURTS—JURISDICTIONAL AMOUNT—RECOURPMENT.

When the plaintiff's declaration, in an action in the circuit court, shows a balance due of over \$2,000, there is no lack or loss of jurisdiction by reason of the reduction of the recovery below \$2,000 by a counterclaim for recoupment, of which, beyond a sum which would not reduce his claim to \$2,000, it does not appear that the plaintiff had knowledge, before bringing suit.

2. APPEAL—SPECIFICATIONS OF ERROR—WAIVER.

Specifications of error which, though quoted in the brief, are not therein supported by argument or citation, or even a suggestion to point out the question intended to be raised, must be regarded as waived, even if they have been noticed on the argument.

. SAME—SPECIFICATIONS OF ERROR.

An exception and specification of error directed to a portion of a charge to a jury containing several propositions, some of which are favorable to the exceptant, are not available to raise the question of error in such charge.

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

This was an action by the Wheeler-Bliss Manufacturing Company against Thomas F. Pickham. The plaintiff obtained a verdict for \$1,500, and a motion for a new trial was denied. 69 Fed. 419. Defendant brings error.

A. C. Story, for plaintiff in error.

James M. Flower, Frank J. Smith, and Harrison Musgrave, for defendant in error.

Before WOODS, JENKINS, and SHOWALTER, Circuit Judges.

WOODS, Circuit Judge. The action was in assumpsit for goods sold and delivered, and judgment was given for the plaintiff, the defendant in error, against the plaintiff in error, for less than \$2,000. Of the errors assigned the only one supported in the brief by argument or by a citation of authorities is that the court was without jurisdiction of the cause, or, as it is stated in the brief, "that the court erred in retaining jurisdiction of the case after it had become manifest that the extreme limit of the claim of the plaintiff was less than two thousand dollars." It is a sufficient answer that the declaration alleged, and the accompanying statement of the account showed, a balance due of \$2,610, and that the recovery was for a less sum only by reason of the counterclaim set up for recoupment, of which, beyond the sum of \$400, it does not appear that the complainant had knowledge before bringing the action. There was therefore no lack or loss of jurisdiction. *Hilton v. Dickinson*, 108 U. S. 165, 2 Sup. Ct. 424. There is nothing to the contrary in *Bowman v. Railway Co.*, 115 U. S. 611, 6 Sup. Ct. 192, and *Carne v. Russ*, 152 U. S. 250, 14 Sup. Ct. 578.

Under the second head of the brief for the plaintiff in error the general proposition is urged that the defendant was entitled to re-