

the long delay in bringing this cause on for trial was a necessary incident to difficulties met in winding up the company's affairs, it is not made apparent by anything in the record. If such necessity existed, and if, under the laws of Great Britain and Ireland, the plaintiff corporation is still in existence for the purpose of closing up its affairs, it can avail itself of those facts in a replication to the plea. The motion to strike out the answer will be denied.

GRISWOLD v. BACHELLER.

(Circuit Court, D. Rhode Island. January 14, 1897.)

No. 2,547.

1. PLEADING—DEMURRER—WAIVER OF IRREGULARITIES.

A general demurrer waives objection that the plea is not verified, nor supported by certificate of counsel, as required by the rules of court.

2. ABATEMENT—PENDENCY OF ANOTHER ACTION—LAW AND EQUITY.

Suits at law and in equity are necessarily so dissimilar that, as a rule, one cannot be pleaded in abatement of the other.

3. SAME—SUFFICIENCY OF PLEA.

A plea alleging the pendency of another action, which does not show with certainty that such action is for the same cause, and the same or similar relief, is insufficient.

E. D. Bassett and Samuel R. Honey, for plaintiff.

W. P. Sheffield, for defendant.

BROWN, District Judge. In this action of trespass *quare clausum fregit* the defendant pleads in abatement that, before the commencement of the present action, the plaintiff "impleaded" the defendant "in a suit in equity in this court, by bill of complaint, for the identical trespasses in the said writ and declaration mentioned." Upon general demurrer to the plea the plaintiff makes objection that it is not verified by affidavit, nor supported by the certificate of counsel, as required by sections 2 and 3 of rule 8 of the rules of the circuit court for the First circuit. This objection goes only to the reception of the plea, and the irregularity is waived by the filing of a demurrer, the office of which is to put in issue the legal effect of the plea after it has been received. *Bank v. Slocomb*, 14 Pet. 60; *Good-year v. Toby*, 6 Blatchf. 130, Fed. Cas. No. 5,585.

The plea, therefore, must be considered upon its merits. As a court of equity has no jurisdiction over a case identical with the present action, the prior suit in equity either must be defective, or must differ in scope from the present action. Since the jurisdiction of equity is limited to cases in which the law does not afford a complete and adequate remedy, it has been held by cases both at law and in equity that two causes, one at law, one in equity, are *ex necessitate* so dissimilar that the pendency of one cannot be pleaded in abatement of the other. *Blanchard v. Stone*, 16 Vt. 234; *Hatch v. Spofford*, 22 Conn. 498; *Kittredge v. Race*, 92 U. S. 116; *Colt v. Part-ridge*, 7 Metc. (Mass.) 570; *Black v. Lackey*, 2 B. Mon. 257; *Graham v. Meyer*, 4 Blatchf. 129, Fed. Cas. No. 5,673; *Story*, Eq. Pl. § 742.

But, even conceding the possibility of exception to this broad statement of the rule, the defendant's plea must be held insufficient, since it does not set forth with certainty that the prior suit is for the same subject-matter, and for the same or similar relief, and since the allegations fail to show that the defendant has been twice vexed for the same matter. The demurrer is sustained.

CREW-LEVICK CO. v. BRITISH & FOREIGN MARINE INS. CO., Limited.

(Circuit Court, E. D. Pennsylvania. December 30, 1896.)

No. 336.

FIRE INSURANCE—GOODS IN TRANSIT—TERMINATION OF RISK.

Defendant, in insuring oil for inland transportation, issued a marine policy with a rider attached. In the printed clause, providing that the risk should begin from the time of loading the goods on "said vessel," and continue until they were "safely landed," the blanks for place of loading and landing were not filled. The rider stated that the insurance was "on oil in tank cars, in transit." *Held*, that the risk terminated upon delivery of the oil by placing the cars upon consignee's private siding, at its refinery.

T. F. Jenkins, for plaintiff.

H. N. Paul, Jr., for defendant.

DALLAS, Circuit Judge. The policy sued upon covered "oil contained in tank cars." The question is whether the loss, which admittedly occurred, though of oil in tank cars, was one for which the defendant had contracted to indemnify the plaintiff. The right solution of this question depends upon what is the correct construction of the policy respecting its continuance. In the form used there is contained, in print, the language:

"Beginning the adventure upon the said goods and merchandise from and immediately following the loading thereof on board of the said vessel, at ———, as aforesaid, and so shall continue and endure until the said goods and merchandise shall be safely landed at ———, as aforesaid."

The blanks here indicated were not filled in; and the language quoted is followed by other matter which is accurately applicable only to marine insurance, with the exception of the words, "The said goods and merchandise hereby insured, are valued at" (printed) "as per form attached herein" (written), which, of course, were, by the written portion, made specifically applicable, and by the reference to the form attached were made definitive. The form referred to consists of a typewritten paster, as follows:

"New York, October 24th, 1895.

"In consideration of \$12.00 additional premium, this policy is hereby made to cover under the following form, and not as heretofore, to wit:

"Crew-Levick Company,

"For account of whom it may concern.

"Loss, if any, payable to them.

"\$2,500 on oil contained in tank cars in transit, principally from oil regions in Pennsylvania and New York to various places, and to Sea-Board Oil Works, South Chester, Pa., and from Sea-Board Oil Works to various places.

"It is the true intent and meaning of this policy to fully indemnify the assured for each and every loss by or in consequence of fire, derailment, or collision, not