Lavender, 21 Wall. 276, 280; Heidritter v. Oil-Cloth Co., 112 U. S. 294, 304, 5 Sup. Ct. 135; Walker v. Brown, 11 C. C. A. 135, 63 Fed. 204, 212. It is a rule of general application in the United States courts that, where property is in the actual possession of one court of competent jurisdiction, such possession cannot be disturbed by process out of another court. Hagan v. Lucas, 10 Pet. 400; Peck v. Jenness, 7 How. 612, 625; Taylor v. Carryl, 20 How. 583; Freeman v. Howe, 24 How. 450; Ellis v. Davis, 109 U. S. 485, 498, 3 Sup. Ct. 327; Krippendorf v. Hyde, 110 U. S. 276, 4 Sup. Ct. 27; Covell v. Heyman, 111 U. S. 176, 4 Sup. Ct. 355; Borer v. Chapman, 119 U. S. 587, 600, 7 Sup. Ct. 342; In re Tyler, 149 U. S. 164, 181, 13 Sup. Ct. 785; Byers v. McAuley, 149 U. S. 608, 614, 13 Sup. Ct. 906; In re Chetwood, 165 U. S. 443, 457, 17 Sup. Ct. 385; Ball v. Tompkins, 41 Fed. 486, 490; Compton v. Jesup, 15 C. C. A. 397, 68 Fed. 263, 279; Foley v. Hartley, 72 Fed. 570, 573; Gamble v. City of San Diego, 79 Fed. 487, 500. It follows from the views expressed in the foregoing authorities that the national courts have no jurisdiction in ordinary probate matters in the settlement of the estates of deceased persons. They cannot appoint administrators or executors, nor regulate the proceedings provided by the laws of the state for the discharge of the duties of their trust. They cannot probate a will. These and other matters that need not be further mentioned belong exclusively to the jurisdiction of the state courts that are invested with authority to act in the settlement of the estates of deceased persons. In re Cilley, 58 Fed. 977; In re Foley, 76 Fed. 390, 394; Armstrong v. Lear, 12 Wheat. 169; Fouvergne v. City of New Orleans, 18 How. 470. But, in the regular course of the administration of an estate, nonresidents may have the right to institute an independent action in the national courts to establish a claim or demand against the estate, or to have such matter adjudicated upon, if the requisite citizenship exists, by a removal from the state court, if there controverted. As was said in Hess v. Reynolds, 113 U. S. 73, 77, 5 Sup. Ct. 377, 378:

"It may be convenient that all debts to be paid out of the assets of the deceased man's estate shall be established in the court to which the law of the domicile has confided the general administration of these assets. And the courts of the United States will pay respect to this principle, in the execution of the process enforcing their judgments of these assets, so far as the demands of justice require. But neither the principle of convenience, nor the statute of a state, can deprive them of jurisdiction to hear and determine a controversy between citizens of different states, when such a controversy is distinctly presented, because the judgment may affect the administration or distribution in another forum of the assets of the decedent's estate. The controverted question of debt or no debt is one which, if the representative of the decedent is a citizen of a state different from that of the other party, the party properly situated has a right, given by the constitution of the United States, to have tried originally, or by removal in a court of the United States, which cannot be defeated by state statutes enacted for the more convenient settlement of estates of decedents."

See Payne v. Hook, 7 Wall. 425; Yonley v. Lavender, 21 Wall. 276; Borer v. Chapman, 119 U. S. 587, 7 Sup. Ct. 342; Clark v. Bever, 139 U. S. 96, 103, 11 Sup. Ct. 468; Byers v. McAuley, 149 U. S. 608, 620, 13 Sup. Ct. 906; Wickham v. Hull, 60 Fed. 326, 330;

Walker v. Brown, 11 C. C. A. 135, 63 Fed. 204, 211; In re Foley, 76 Fed. 390, 395. A nonresident creditor of the estate may also, under certain conditions, maintain a suit in equity, for fraud, to set aside a sale of real estate made under authority of the probate court. Johnson v. Waters, 111 U. S. 640, 4 Sup. Ct. 619; Arrowsmith v. Gleason, 129 U. S. 87, 9 Sup. Ct. 237. In Byers v. McAuley the court said:

"The federal court erred in taking any action or making any decree looking to the mere administration of the estate, or in attempting to adjudicate the rights of citizens of the state as between themselves. The state court had proceeded so far as the administration of the estate carries it forward to the time when distribution may be had. In other words, the debts of the estate had been paid, and the estate was ready for distribution, but no adjudication had been made as to the distributees; and in that exigency the circuit court might entertain jurisdiction in favor of all citizens of other states, to determine and award their shares in the estate. Further than that it was not at liberty to go."

The question, and the sole question, to be determined upon the amended petition, arises under the provisions of the statute of this state, as to whether the property of the deceased is separate or community property. The state court has exclusive jurisdiction to determine that question. The question which is presented upon the amended petition is entirely different in its character from any of the cases which authorize the federal courts to take jurisdiction, either by the commencement of an independent suit, or by the removal of a cause regularly pending in the state court. The case is in many essential particulars dissimilar from the facts as presented in Foley v. Hartley, 72 Fed. 571, and In re Foley, 76 Fed. 390. There the only issue in dispute was "whether or not M. D. Foley, in his lifetime, in writing, acknowledged Vernon Harrison Hartley to be his son, in the presence of a competent witness." That question may be involved in the present controversy. But the parties in the present proceeding, upon the amended petition for distribution, are different, and additional issues are raised. Mrs. Foley was not a party in the former case. It was there admitted that she was entitled, as against the nonresident heirs and the minor heir, to one-half of the estate of M. D. Foley, deceased. The contest was solely between the nonresident heirs and the minor heir, as to which was entitled to the other half of the estate. Mrs. Foley, after her marriage, and by her amended petition, has presented an entirely different question. She claims that a part of the estate is community property. She therefore has an interest therein adverse to the nonresident heirs, and adverse to the minor heir. Proceedings in the probate court to determine the question whether the property of a deceased person is separate or community property cannot be said to be a "suit of a civil nature at law or in equity," within the meaning of the removal act of 1887–88. In the determination of the question as to the character of the property, there cannot, in the nature of things, be any separable controversy. All persons claiming any right to share in the distribution of the property are equally interested in the proceedings. Their rights must be measured and determined by the same rule. It cannot be held that the nonresidents would be entitled to have that question, as to them, determined in