

tional and legal rights, and at the same time avoid danger, that is plainly threatened, of a collision of forces between the two courts. I do not hesitate to entertain jurisdiction with the idea that the court is incompetent to execute any decree which it has jurisdiction to make, but because it has not the lawful right to use its power where it has to invade the actual custody and possession of property by the superior court of this county; and that, in view of the facts set before me in this plea, I consider is what may become necessary by further proceeding in this case. An order will be entered sustaining the plea.

WESTINGHOUSE AIR-BRAKE CO. v. GREAT NORTHERN RY. CO. et al.

(Circuit Court, S. D. New York. December 27, 1897.)

CIRCUIT COURTS—JURISDICTION IN PATENT CASES.

In patent suits it is not necessary that the defendant shall be an inhabitant of the district in which he is sued, if service is there properly obtained upon him. *Southern Pac. Co. v. Earl*, 82 Fed. 690, followed.

This was a suit in equity by the Westinghouse Air-Brake Company against the Great Northern Railway Company and others for alleged infringement of a patent. The cause was heard upon the bill and pleas thereto raising a question of jurisdiction.

Frederic H. Betts, L. F. H. Betts, James J. Cosgrove, and Kerr, Curtis & Page, for complainant.

Frederick P. Fish and W. D. Grover, for defendants.

COXE, District Judge. This is an equity suit for the infringement of a patent. The pleas dispute the jurisdiction of the court on the ground that neither of the defendants served with process within this district was at the time of such service a citizen of this state or an inhabitant of this district. The question thus presented, which has been variously decided by the circuit courts, must now be determined in favor of the complainant, so far at least, as this court is concerned, upon the authority of *Southern Pac. Co. v. Earl*, 82 Fed. 690, 694, affirming *Earl v. Southern Pac. Co.*, 75 Fed. 609. The pleas are overruled, the defendants to answer within 20 days.

BOYD v. STUTTGART & A. R. R. R. et al.

(Circuit Court of Appeals, Eighth Circuit. December 8, 1897.)

No. 851.

APPEAL—SERVICE OF CITATION—DISMISSAL.

An appeal presenting a question whether a judgment creditor of a railroad company or the trustee of its mortgage bondholders is entitled to priority of lien must be dismissed on motion of the trustee, when no citation has been addressed to or served upon it.

Appeal from the Circuit Court of the United States for the Eastern District of Arkansas.

This was a suit in equity by J. A. Boyd against the Stuttgart & Arkansas River Railroad and another, seeking to recover a decree

for money advanced and services rendered, and to have the same declared a lien upon the railroad property. The defendant filed an answer, but shortly afterwards a receiver of its property was appointed, on the application of the mortgage bondholders, with an independent suit, and the receiver was permitted to defend the action. The suit resulted in a decree adjudging that complainant recover the sum of \$12,627.48, with interest and cost, but that the said sum did not constitute a lien on the railroad property and franchises. From this decree, the present appeal was taken.

P. C. Dooley and Ewan, Manning & Lee, for appellants.
John McClure, for appellees.

Before SANBORN and THAYER, Circuit Judges, and PHILIPS, District Judge.

PER CURIAM. The question upon the merits in this case is whether J. A. Boyd, a judgment creditor of the Stuttgart & Arkansas River Railroad Company, or the Farmers' Loan & Trust Company, the trustee for certain bondholders secured by a mortgage made by that company, is entitled to the superior lien upon its franchises and property. No citation was addressed to or served upon the trust company, and upon that ground it has appeared, and made a motion to dismiss the appeal. The motion is granted upon the authority of *Trust Co. v. McClure*, 49 U. S. App. 43, 24 C. C. A. 64, and 78 Fed. 209; *Dodson v. Fletcher*, 49 U. S. App. 61, 24 C. C. A. 69, and 78 Fed. 214; and *Trust Co. v. Clark*, 83 Fed. 230.

NATIONAL BANK OF COMMERCE OF TACOMA, WASH., v. WADE et al.

(Circuit Court, D. Washington, W. D. December 4, 1897.)

1. JURISDICTION OF FEDERAL COURTS—SUIT BY NATIONAL BANK AGAINST OFFICERS—FEDERAL QUESTION.

A suit by a national bank against its former managing officers to charge them with losses sustained by reason of their having made loans to one individual in excess of 10 per cent. of the capital stock, and other loans without personal security, in violation of the national banking statutes, the right of recovery being claimed under Rev. St. § 5239, is one arising under the laws of the United States.

2. NATIONAL BANKS—SUIT AGAINST DIRECTORS.

A national bank may maintain a suit against its directors to enforce their liability under Rev. St. § 5239, for losses resulting from a violation of the statutory requirements in conducting the business of the bank. A suit by the comptroller for dissolution of the association and an adjudication of such violations is not a condition precedent to the enforcement of such liability.

3. SAME—JURISDICTION OF EQUITY.

A suit by a national bank against its former officers and directors, under Rev. St. § 5239, to recover for losses resulting from their mismanagement in violation of the provisions of the national banking law, is cognizable in equity, where the transactions involved are complicated, and the conversion of securities into money is required before the extent of the liability can be ascertained, and when, therefore, the remedy at law is not complete or adequate.