

maintained by the heirs until administration of the estate has been settled, or the property distributed by a decree of the probate court. *Meeks v. Hahn*, 20 Cal. 624; *Chapman v. Hollister*, 42 Cal. 462; *Meeks v. Kirby*, 47 Cal. 168; *Page v. Tucker*, 54 Cal. 121. And the same court has also held, in one case, that, pending the administration of the estate, the heir cannot maintain an action to quiet title. *Harper v. Strutz*, 53 Cal. 665.

Without reference, however, to the statutes of California, or decisions based thereon, except so far as they establish the competency of the probate court to determine questions of heirship, the present suit, it seems to me, is a fit one for the application of the rule of law, recognized and applied universally in this country, that, where two courts have concurrent jurisdiction over the same subject-matter, the one before whom proceedings are first commenced, and whose jurisdiction first attaches, will be left to determine the controversy, without interference from the other. *Sharon v. Terry*, 36 Fed. 337; *Gamble v. City of San Diego*, 79 Fed. 487, and cases there cited; *Brooks v. Delaplaine*, 1 Md. Ch. 354. In the last-cited case the chancellor says:

"When two courts have concurrent jurisdiction over the same subject-matter, the court in which the suit is first commenced is entitled to retain it. This rule would seem to be vital to the harmonious movement of courts whose powers may be exerted within the same spheres, and over the same subjects and persons. * * * Any other rule will unavoidably lead to perpetual collision, and be productive of the most calamitous results."

For the reasons above indicated, this bill will be dismissed. In order, however, that the decree herein may not affect any rights or interests which the complainant may have acquired through *Andrew Chism*, as one of the heirs at law of *Mary Chism*, deceased, the dismissal will be without prejudice to any other proceeding or suit now pending, or that may be hereafter brought, for the determination of such rights or interests.

GRAND TRUNK RY. v. CENTRAL VERMONT R. R. et al.

(Circuit Court, D. Vermont. December 29, 1897.)

COMITY BETWEEN CIRCUIT COURTS — RAILROAD RECEIVERS — DIVERSION OF FREIGHT—INJUNCTION.

Under the rules of comity, which require the decisions of circuit courts to be followed by each other, especially when they relate to the administration of the same subject-matter, a petition by a railroad receiver for an injunction restraining receivers of another line from diverting freight traffic will be granted when the circuit court of another circuit has afforded the same petitioner like relief in a similar case against another company.

This was an intervening petition, filed by *Charles Parsons*, as receiver of the *Ogdensburg Railroad*, in the suit of the *Grand Trunk Railway* against the *Central Vermont Railroad* and others, praying an injunction against the receivers of the *Rome, Watertown & Ogdensburg Railway* restraining them from diverting west-bound freight traffic of their lines from petitioner's road.

Hornblower, Byrne, Taylor & Miller, for petitioners.
Benj. F. Fifield and Chas. M. Wilds, for respondent.

WHEELER, District Judge. The intervening petition of Charles Parsons, receiver of the Ogdensburg Railroad, for restraint of diversion of freight traffic by the receivers herein of the Rome, Watertown & Ogdensburg Line, from his road as a part of that line, has now been heard. The case hereupon does not differ materially from that of the petitioner against the New York Central & Hudson River Railroad in the Southern district of New York, except as to refusals of the petitioner to forward freight without payment of traffic balances. An injunction was granted there to restrain diversion of east-bound freight. Comity between courts requires that decisions of circuit courts should be followed by each other, especially when relating to administration of the same subject-matter, as here, where diversity would create confusion. The refusals to forward mentioned had no reference to the continuance of this freight line, but only to balances, however arising, and were accommodated without reference to it; and, now that they are settled, should have no place respecting its continuance. Following that decision, as it should be followed while it remains in force, the prayer of this petition should be granted, and these receivers should be restrained from diverting the west-bound freight traffic of the Rome, Watertown & Ogdensburg Line from the petitioner's road. Prayer of petition granted.

STATE v. PORT ROYAL & A. RY. CO. et al. KING et al v. SAME.
OGDEN v. SAME. Ex parte BATES.

(Circuit Court, D. South Carolina. January 1, 1898.)

1. RAILROAD RECEIVERSHIPS—ACTIONS FOR DAMAGES—SERVICE OF PROCESS.

The owner of an animal killed by a train while the road was in a receiver's hands sued the railroad company without joining the receiver as a defendant, but process was served only upon the receiver through an agent. The receiver's claim agent appeared and defended the suit, which resulted in a judgment against the company. *Held*, that the judgment was valid, so as to bind the property in the receiver's hands.

2. SAME—PRIORITY OF LIENS.

A judgment against a railroad company for injuries to personal property, when rendered in a suit brought within 12 months from the time the cause of action arose, is a prior lien to that of a railroad mortgage.

3. SAME.

A receivership is not personal, but continuous, so that claims arising against different receivers, one of whom succeeds the other, stand on the same footing.

This was an intervening petition filed by J. B. Bates in the receivership proceedings against the Port Royal & Augusta Railway Company and others, whereby he sought to enforce an alleged lien against the railroad property for the amount of a judgment obtained by him against the railroad company for the killing of an animal by one of its trains.

B. A. Hagood, for petitioner.

S. J. Simpson, for respondents.

SIMONTON, Circuit Judge. This is an intervention by J. B. Bates, claiming payment of a certain judgment obtained by him against the