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

Port Royal & Augusta Railway Company. Bates was the owner of a Jersey bull, which he alleged was killed on the line of that road, by the train of the road, on November 30, 1892. He put his claim in suit before a trial justice of Barnwell county, making the railroad company defendant, and obtained a judgment, which was entered October 26, 1893, for $90 and costs. The defense rests upon the fact that at the date of the accident and at the time of the suit the road and its property were in the hands of Comer, receiver; that as a consequence of this the service of process upon an agent of the receiver was not service on the company,—in fact, no service at all,—and that the judgment binds neither the company, which was named as a party, nor the receiver, Comer, who was not sued; and that in no event can the petitioner claim for any demand against Comer, receiver, because the true construction of the order of this court renders the purchaser at foreclosure sale liable only for claims against Averill, receiver. The case was defended before the trial justice by a Mr. Connor, claim agent in the employment of the receiver, was continued at his instance, and on the day to which it was continued judgment was given after trial.

When an insolvent corporation is put into the hands of a receiver, this only effects a change in the management of the property. The receiver is substituted for those who theretofore had governed the corporation, but the title is not changed. Union Bank of Chicago v. Kansas City Bank, 136 U. S. 223, 10 Sup. Ct. 1013. Nor is the existence of the corporation destroyed. Bank of Bethel v. Pahquipe Bank, 14 Wall. 398. So the suit will lie against the corporation. But, inasmuch as the receiver was put in charge of and administered all the affairs of the corporation, service of process was properly made upon him through his agent. Davis v. Gray, 16 Wall., at page 217.

The agent of the receiver appeared in the case, and defended. The trial was had and judgment rendered. This judgment, having been entered on an action for injury to personal property brought within 12 months from the date of the cause of action, has a lien prior to the mortgage, even if it is not a claim against the receivership.

It is contended, however, that the claim is not against Receiver Averill, but against Comer, receiver. But a receivership is not personal; it is continuous. The individuals holding it represent a condition of things created by the court. As is said in McNulta v. Lochridge, 141 U. S. 331, 12 Sup. Ct. 11: "The receivership is continuous. It is analogous to a corporation sole. The action is not against the receiver as a person, but against the receivership. So, a receiver may be sued for the act of his predecessor, without leave of the court." So, in whatever aspect we may view this case, either as a suit against the corporation or as against the receivership, this judgment has a paramount claim. Indeed, it has been held by a court of high persuasive authority that a judgment rendered against a receiver in a state court in an action at law is conclusive as to the existence and the amount of the plaintiff's claim, but the time and manner of its payment are to be controlled by the court appointing the receiver. Dillingham v. Hawk, 9 C. C. A. 101, 60 Fed. 494.

Let the petitioner have a decree for the amount of his judgment and interest, with costs.

EDGELL et al. v. FELDER.

(Circuit Court of Appeals, Fifth Circuit. June 23, 1897.)

No. 613.

1. PARTIES IN EQUITY.

In a bill by one member of a partnership to recover salaries and commissions due the partnership, where it is alleged that the other partner refuses to join as a party plaintiff, and has fraudulently conspired with the other defendants to defeat a recovery, such latter partner is a proper and necessary party defendant.

2. APPEARANCE.

Parties who enter a special appearance, and thereupon file motions to dismiss the suit for want of jurisdiction and for want of equity, and to discharge a receiver and dissolve a temporary injunction for want of jurisdiction, and because no previous notice was given of the application for the injunction, and it was issued in term time, without requiring complainant to give bond, must be held to have appeared generally in the cause.

Appeal from the Circuit Court of the United States for the Southern District of Georgia.

This was a bill in equity by Thomas J. Felder, a citizen of Georgia, residing in the Southern district thereof, against Alfred N. Hehre, a citizen of New York, George S. Edgell and Austin Corbin, Jr., also citizens of New York, the New England Mortgage Security Company, a citizen of Massachusetts, and five corporations existing under the laws of the kingdom of Great Britain. The defendant George S. Edgell was sued as surviving partner of the firm which was dissolved by the death of Austin Corbin, Sr., and also as co-partner with Austin Corbin, Jr., composing the present partnership doing business as the Corbin Banking Company. The purpose of the suit was to recover compensation for services rendered by the plaintiff individually for the sales and renting of lands under contract from May 1, 1894, to the date of the formation of a partnership between complainant and the defendant Alfred N. Hehre, on or about September 1, 1895; and also for the recovery of complainant's unsettled interest in the earnings of the partnership of Felder & Hehre from September 1, 1895, until the death of Austin Corbin, Sr., June 6, 1896; and also for the recovery of the earnings of Felder and Hehre alleged to be due from the new firm composed of Edgell and Austin Corbin, Jr., from June 6, 1896, to about December 1, 1896. The bill alleged that Alfred N. Hehre was made a defendant because he refused to join as a party plaintiff, and that he fraudulently conspired with the other defendants to defeat the recovery of what was due to the firm of Felder & Hehre. No decree, however, was asked against him. The defendants, being nonresidents of the state, entered a special or limited appearance "for the purpose of making a motion to dissolve the injunction and discharge the receiver appointed in this cause, as well as also to submit a motion for the dismissal of said bill for the want of jurisdiction in the court." The defendants accordingly filed motions to dissolve the injunction, discharge the receiver, and dismiss the bill, setting up that the court was without jurisdiction to hear the cause under the statutes of the United States; that the suit could not be brought in the district of complainant's residence—First, because the defendant Hehre was a real complainant, so far as the recovery sought was for what was due to the firm of Felder & Hehre, and therefore could not be brought in the district where only Felder resided; and, second, because the jurisdiction of the court was not founded "only on the fact that the action is between citizens of different states." It was also set up as a ground for the motions that the bill sought to recover what was due to Thomas J. Felder individually for his services prior to the formation of the partnership of Felder & Hehre, and that Felder had an adequate remedy at law to recover that debt, for which reason the bill was without equity. In the circuit court these motions were denied, and the defendants have appealed.

Webb & Bradshaw, for appellants.
Marion Erwin, for appellee.