In view of our conclusion that the complainant has not established, as against any of the defendants except Bourbon county, the existence of an irrevocable contract of tax exemption, either by res judicata or on the merits, and as this issue thus presented and decided is the only one upon which complainant, a corporate citizen of Kentucky, can ask a federal court for relief, we do not pass upon or decide the question raised by complainant under the state decisions whether prior decisions of the court of appeals, though now overruled, prevent the collection of taxes accruing during those years when the prior decisions holding them uncollectible and void remained unreversed. For the reasons given, the order of the court will be that the motion for an injunction against Bourbon county and the certification of the assessment to it by the board of valuation is granted, and to this extent the demurrers to the bills are overruled; but, as to the certifications of the assessment to the other municipalities, the demurrers are sustained, and the bill dismissed.

WELSBACH LIGHT CO. v. MAHLER.

(Circuit Court, S. D. New York. June 6, 1898.)

EQUITY PRACTICE—DISCONTINUANCE.

When a cause has been at issue for over two years by filing of replication, and nothing whatever has since been done, complainant cannot then discontinue; and defendant is entitled to put the cause on the calendar, and take an order dismissing the bill.

This was a suit in equity by the Welsbach Light Company against William Mahler. The cause was heard on complainant's motion for leave to discontinue.

John R. Bennett, for the motion.
Edward N. Dickerson, opposed.

LACOMBE, Circuit Judge. This case was at issue by filing of replication more than two years ago. Since that time nothing has been done by complainant, except serving the papers for this motion. In consequence, there is no evidence upon which complainant could ask for judgment; nor has the time to take testimony been extended by order of court, nor by express stipulation nor by implied stipulation, as in cases where both sides take testimony after the expiration of the time fixed by rule. Defendant is therefore entitled to put the cause on the equity calendar, and take an order dismissing the complaint. To allow the plaintiff to discontinue would deprive defendant of the right to enter such judgment of dismissal, and possibly avail of it hereafter in future litigation between the same parties. The motion for leave to discontinue is denied; but, if complainant so desires, a decree may be entered reciting the progress of the action, and dismissing complaint, with costs to defendant.

BICKFORD et al. v. McCOMB.

(Circuit Court, W. D. Tennessee, W. D. May 20, 1898.)

No. 421.

1. LIABILITY OF STOCKHOLDER—BILL TO SUBJECT ASSETS—PARTIES.
Mill. & V. Code Tenn. § 4168, allowing any creditor or stockholder, whether he has recovered a judgment or not, to file a bill to subject assets to the payment of his debt, is not applicable to a suit to which the corporation is not a party, and in which a judgment creditor seeks to subject assets in the hands of a creditor or stockholder; and in such case the bill must show execution and nulla bona return.

2. INSOLVENT CORPORATION—BILL FOR CONTRIBUTION—NULLA BONA RETURN.
Where a judgment creditor of an insolvent corporation, who was not a party to the insolvency proceedings, files a bill for contribution against a distributee who has received more than his equitable share of the assets, he need not make the corporation or other creditors parties, nor allege execution and nulla bona return.

3. EQUITY—SUIT FOR CONTRIBUTION AGAINST DISTRIBUTEES OF INSOLVENT—LACHES.
Where insolvency proceedings against a corporation were pending for nearly ten years, a resident creditor, engaged for over four years of the time in litigation with the corporation over a claim growing out of his relation as its landlord, who does not become a party to the insolvency proceedings, and file his claim therein, is guilty of both willful neglect and want of diligence, and cannot maintain a suit against distributees for contribution.

This is a suit in equity by W. A. Bickford and H. R. Sherrod against J. J. McComb to subject to the payment of their judgments against the Southern Oil Works assets of such corporation received by him on final distribution in insolvency proceedings. It was submitted on the pleadings, certain record evidence, and an agreed statement of facts.

Prior to the transactions hereinafter mentioned, the Southern Oil Works was a Tennessee corporation, doing business at Memphis. On the 27th of May, 1875, the state, upon the relation of Kortrecht and other stockholders, filed a bill in equity to dissolve the corporation, wind up its affairs, sell its assets, and pay its debts, as provided in the statutes of Tennessee in such cases. Mill. & V. Code, §§ 4146–4168 (Thomp. & S. Code, §§ 3409–3431). J. J. McComb, the principal stockholder, was also a very large creditor, both as a lienholder and as a general creditor. He filed a cross bill for the enforcement of his lien and the collection of his debt, not only by the sale of its properties, but also by an assessment for the unpaid stock of the stockholders. After about 10 years of voluminous and formidable litigation, there was a final decree disposing of the assets by sale, assessing the stockholders upon the unpaid stock, and a distribution of the proceeds among the creditors, according to the terms of that decree. The date of this decree was January 7, 1885. McComb was declared a creditor for $126,190.30, and he was assessed, as unpaid on his shares of stock, $36,375, which was credited upon his debt. From the assessments on other stockholders and other assets there also was realized by him in the distribution a further sum of $25,172.42, which was also credited upon his debt against the company; making a total credit of $61,547.42 which he received out of the assets, leaving a balance due to him of $64,642.88. Pending that suit, and about a year after it was begun, W. A. Bickford and H. B. Sherrod, the plaintiffs in this case, leased to the Southern Oil Works certain storehouses in the city of Memphis, to be used as a warehouse for the storage of its products. On the 28th of November, 1876, this building collapsed, and was totally destroyed. On the 18th of January, 1881, Bickford and Sherrod respectively began suits against the Southern Oil Works claim-