

day named, "by the rule of the state court," which is the phrase used in the federal statute. Attention is now called to the revised phraseology of rule 24 (general rules of practice of the state), adopted January 1, 1896, which reads as follows:

"Rule 24. * * * When the time to serve any pleading has been extended by stipulation or order for twenty days, no further time shall be granted by order except upon two days' notice to the adverse party of the application for such order."

This rule, coupled with the stipulation, may fairly be held to make an extension "by rule of the state court," and the removal should be held to be in time. The defendant Dodge, who, it is alleged, is a citizen of New York, does not seem to be a necessary party. Motion to remand denied.

SCHOOL DIST. OF CITY OF SEDALIA, MO., v. DEWEESE.

(Circuit Court, W. D. Missouri, C. D. March 28, 1899.)

No. 2,204.

LIMITATION OF ACTIONS—AVOIDANCE OF BAR—PLEADING.

A mere allegation that plaintiff "had no knowledge or notice" of an alleged fraudulent conversion of property, on which the action is based, until a later date, is insufficient to avoid the bar of limitation; no facts showing either concealment by defendant or diligence on the part of plaintiff being alleged.

On Demurrer to Petition.

John H. Bothwell and Chas. E. Yeater, for plaintiff.
William S. Shirk, for defendant.

PHILIPS, District Judge. This cause has been submitted on a general demurrer to the petition. It is not deemed necessary that the court should pass upon other questions raised by the demurrer, in view of the fact that the demurrer must be sustained on the ground that the cause of action, on the face of the petition, is barred by the statute of limitations. Waiving the consideration of the question as to when plaintiff's cause of action first accrued, as against James C. Thompson, it certainly accrued, as against the First National Bank of Sedalia, not later than the month of July, 1893; and, as this suit was not instituted until the 20th day of January, 1899, more than five years had elapsed after the cause of action accrued when the suit was filed. The only attempt on the part of the plaintiff to avoid the operation of the statute is the following amendment to the petition, admitted at the hearing of this demurrer, to wit:

"And, further, plaintiff states that it had no knowledge or notice of the fraudulent conversion or sale of said bonds by said Thompson as aforesaid, and did not discover the same until after the failure of said bank, in May, 1894."

This is wholly insufficient to avoid the statute of limitations in an action for money had and received. *Wood v. Carpenter*, 101 U. S. 141; *Foley v. Jones*, 52 Mo. 64; *Wells v. Halpin*, 59 Mo. 92; *Moore v. Smelting Co.*, 80 Mo. 86; *Hoffman v. Parry*, 23 Mo. App. 20. The

demurrer is therefore sustained, with leave to plaintiff to amend its petition, if it so desires, on or before the 20th day of April, A. D. 1899.

MASURY v. ARKANSAS NAT. BANK et al.

(Circuit Court of Appeals, Eighth Circuit. March 27, 1899.)

No. 1,110.

1. CORPORATIONS—TRANSFER OF STOCK—STATUTORY PROVISIONS.

A provision in the charter or by-laws of a corporation, or in a general incorporation act, that stock shall be transferable only on the books of the corporation, is intended to prescribe a mode of transfer as between the corporation and a stockholder, in all matters relating to the internal government and management of the corporation, rather than between the stockholder and third parties; and, notwithstanding such provision, a stockholder may divest himself of all beneficial interest in his stock by an assignment and delivery of his certificate, although no transfer is made on the books of the corporation.

2. SAME—PLEDGE OF STOCK.

Where a stockholder in a corporation has pledged his stock as collateral security, by the indorsement and delivery of his certificate, a creditor, by the levy of an attachment or execution, can only reach the interest of the pledgor therein, and is not aided, except in favor of purchasers at a sale under execution who purchase for value and without notice, by a statute providing that stock shall be transferred only on the books of the company.

3. SAME—PUBLIC RECORD OF STOCK TRANSFERS—CONSTRUCTION OF ARKANSAS STATUTE.

The provision of the Arkansas statute (Sand. & H. Dig. 1894, § 1338) that, on the transfer of any stock in a corporation, a certificate of such transfer shall be deposited for record with the county clerk, and that "no transfer of stock shall be valid as against any creditor of such stockholder until such certificate shall have been so deposited," is not intended to comprehend cases where stock is pledged as security for a debt by a simple indorsement and delivery of the stock certificate, but applies only where the stockholder parts with his entire legal and equitable title by an absolute sale; the purpose of the statute being to afford a record for the benefit of the taxing authorities, or those interested in or dealing with the corporation, and who may be entitled to proceed against the stockholders in case of its insolvency, for which purposes a pledgee is not a stockholder.

4. SAME—USE OF STOCK CERTIFICATES AS COLLATERAL.

In view of the large commercial use made of corporate stock certificates as collateral security, it is to the public interest that such use shall be simplified and facilitated by placing such certificates as nearly as possible on the plane of commercial paper.

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

This case grows out of the following facts: On January 12, 1891, Ed. Hogaboom, who was the owner of 400 shares of stock in the Park Hotel Company, an Arkansas corporation, of the par value of \$25 per share, assigned the certificate therefor to Grace Masury, the appellant and the complainant below, as collateral security for a loan of \$10,000 which was that day made by her to said Hogaboom. The pledge of the stock was made in the state of New York. On May 1, 1896, the Arkansas National Bank, one of the appellees, brought a suit by attachment against said Ed. Hogaboom in the circuit court for Garland county, Ark., and caused the writ of attachment to be levied on the aforesaid stock, which stood in the name of Hogaboom on the stock book