clearly the proper one, and is supported by Woodruff v. Railway Co., 93 N. Y. 610.

The decree of the circuit court was right, and is accordingly affirmed.

LANDON v. BULKLEY et al.

(Circuit Court of Appeals, Second Circuit. May 25, 1899).

No. 158.

JUDGMENTS—CONCLUSIVENESS.

The judgment of a state court, adjudicating the rights of the parties in a certain fund, is a bar to a subsequent suit in a federal court between the same parties, relating to the same fund, although the rights asserted in the second action are based upon matters which were not, but might have been, presented to the court and passed upon in the first.[1]

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

This is an appeal from a decree of the circuit court, Southern district of New York, which sustained demurrers to a bill in equity. The suit involved the disposition of a part of the estate left by Daniel B. Fayerweather.

Edward W. Paige, for appellant.

John E. Parsons and C. N. Bovee, for appellees.

Before LACOMBE and SHIPMAN, Circuit Judges.

PER CURIAM. The decision of this court in Fayerweather v. Ritch (Jan. 5, 1899) 34 C. C. A. 61, 91 Fed. 721, is controlling of this appeal. It is sufficient to quote from the opinion.

"By whatever process of reasoning the result was reached, it is plain that, by the judgment of the state court, it has been determined that the fund now in controversy equitably vested in the various corporations made legatees by the ninth clause of the will, and did not, as to any part of it, belong to the complainants; and that determination was reached in an action between the same parties now present, brought to settle the ultimate rights of each to the fund. As the present suit is brought to determine the rights of the same parties to the same fund, we are unable to doubt that the former judgment is an estoppel, and a finality, not only as to every matter which was offered and received to sustain or defeat the respective claims of the parties to the fund, but also as to any other admissible matter which might have been offered for that purpose."

The decree of the circuit court is affirmed, with costs.

[1] For conclusiveness of judgments as between federal and state courts, see note to Railroad Co. v. Morgan, 21 C. C. A. 478.

BRINKLEY v. LOUISVILLE & N. R. CO.

(Circuit Court, W. D. Tennessee. June 23, 1899.)

1. APPEAL—POWER OF CIRCUIT COURT TO DENY.
   The allowance of an appeal by a circuit court is not a matter of course, though a proper application therefor is seldom denied; and where a suit, as disclosed by the bill, is clearly not within the jurisdiction of that or the appellate court, and has been dismissed on that ground, and is, moreover, so manifestly vexatious and without legal merit that it is impossible to be maintained in any court, and the court would have been justified in striking the bill from its files, an application for an appeal in forma pauperis will be denied.

2. SAME—IN FORMA PAUPERIS—STATUTE.
   Although it be a proper construction of Act July 20, 1892 (27 Stat. 252, c. 209), that an appeal may be prosecuted in forma pauperis, the circuit court has authority, under section 4 of that act, to refuse the privilege to a litigant, if it deems the cause unworthy of a trial, or is satisfied that the alleged cause of action is frivolous or malicious.

On Application for Appeal.

On the 6th of December, 1898, the plaintiff, describing himself as a "resident of San Joaquin county, California," filed this bill, describing the railroad company only as "defendant"; these descriptions, such as they are, being found only in the caption. The bill is drawn in four numbered paragraphs, and, being brief, will be here inserted as a part of this statement of the case, to speak for itself, as follows:

"To the Chancellor of the Court of Equity in the United States Circuit Court of the Western District of Tennessee.

"W. A. Brinkley, Resident of San Joaquin County, California, Complainant, v. Louisville & Nashville R. R. Co., Defendant.

"(1) Complainant sues for revival of judgment by verdict of jury rendered June 15, 1887, in circuit court of Shelby county, in case known as 'W. A. Brinkley v. Louisville & Nashville R. R. Co.'

"(2) The facts are as follows: Complainant bought a first-class ticket at Brownsville to Memphis, Tenn. When he entered the car he was assaulted by brakeman of the train at the same time defendant cocked a pistol and pointed in his face, thus ordering out of car. Complainant brought suit in justice court of Shelby county, which gave judgment for complainant for the sum of $100. Defendant made little or no defense, but appealed to the circuit court of Shelby county. Upon trial in the aforesaid court, by written instrument defendant acknowledged and confessed the whole transaction.

"(3) Defendant then warned the jury, through attorney, against the danger to which they would subject their wives and daughters if they recognized complainant's right by giving verdict according to the law and evidence. Following this instruction, the jury rendered verdict contrary to the evidence in the case established by complainant and acknowledged by defendant, as papers in the case will show. The spirit of persecution exhibited by defendant against complainant, and the effect of the verdict rendered contrary to the law and evidence, resulted in a mental prostration which impaired him for service more than thirty days, and enfeebled him more than two years, but he has never been sound as before.

"(4) Complainant's financial capacity, after having spent $300 trying to redress his wrongs upon said strong corporation in the within-mentioned and previous case, compelled him to cease litigation, for want of means, until now. Wherefore complainant prays that the aforesaid judgment be set aside, vacated, and made void, and that defendant pay to complainant: