

ments to be retained from their dividends, but that prior to the commencement of this action a considerable number of the shareholders filed their protest and forbade the complainant to pay over the amounts or to retain them for the purpose of paying the tax. The statute imposes a duty on the complainant in the nature of a trust, but which it can only discharge at the peril of being subjected to numerous suits at the hands of those whose money it retains. As is said in the similiar case of *Cummings v. Nat. Bank*, 101 U. S. 157, "it holds a trust relation which authorizes a court of equity to see that it is protected in the exercise of the duties pertaining to it. To prevent multiplicity of suits, equity may interfere."

It is true the statute in terms does not require the bank to pay the taxes assessed against its shareholders, but by necessary implication it authorizes the bank to do so, and thus brings the case precisely within the facts of *Cummings v. Nat. Bank*. That case must be regarded as a decisive authority against the objections urged here to the right of the complainant to the relief demanded.

A decree is ordered for the complainant.

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STANLEY v. BOARD OF SUP'RS OF ALBANY COUNTY.

(Circuit Court, N. D. New York. ———, 1880.)

1. JURISDICTION OF CIRCUIT COURT—SUIT BY ASSIGNEE—ACT OF MARCH 3, 1875—Under the act of March 3, 1875, no circuit court can assume jurisdiction of any suit founded on contract in favor of an assignee, unless a suit might have been prosecuted in such court to recover thereon if no assignment had been made, except in cases of promissory notes negotiable by the law merchant and bills of exchange, even in cases where no plea has been interposed to the jurisdiction, nor objection taken to the jurisdiction either upon the trial or argument.—[Ed.]

*Jackson v. Ashton*, 8 Pet. 148.

WALLACE, D. J. The complaint in this action must be dismissed because the court has no jurisdiction of the controversy it discloses. The action is for money had and received,

and is brought by the plaintiff as the assignee of Chauncey P. Williams, who, as appears by the complaint, was a resident of the city of Albany, in this state. The action involves the right of the defendant to retain certain sums of money collected as taxes which the plaintiff alleges were illegally exacted. By the act of congress of March 3, 1875, it is provided that no circuit court shall have cognizance of any suit founded on contract in favor of an assignee unless a suit might have been prosecuted in such court to recover thereon if no assignment had been made, except in cases of promissory notes negotiable by the law merchant and bills of exchange. This act modifies section 11 of the act of September 24, 1789, known as the judiciary act, but not in a manner to affect the present question. The plaintiff's assignor could not have prosecuted the suit because he was a citizen of the same state with the defendant.

This disposition of the case cannot be obviated by the fact that the defendant has not interposed a plea to the jurisdiction, or objected to the jurisdiction upon the trial or argument. The objection would be fatal whenever and wherever raised. In *Jackson v. Ashton*, 8 Pet. 148, the supreme court reversed the decree of the court below, and dismissed the appeal when it did not appear in the bill of complaint that the parties were citizens of different states, although the counsel for the appellee was anxious that the court should hear and determine the case, and waived the objection.

The court is not permitted to take cognizance of the controversy which has been brought before it.

The complaint is dismissed accordingly.

## LOW v. DURFEE.

(Circuit Court, D. Massachusetts. December 30, 1880.)

1. **SUIT AGAINST INSOLVENT—DEFENCE BY ASSIGNEE—COSTS.**—Pending a suit upon a promissory note by a citizen of New York against a citizen of Massachusetts, the defendant was adjudged an insolvent under the law of the latter state, and his assignees thereupon came in and defended, and subsequently submitted to have the case defaulted. *Held*, that the action should be dismissed, as against the assignees, without costs, unless the plaintiff elected to take judgment for the purposes of proof in insolvency, in which case that election was to be expressed in the judgment, and no execution should issue.
2. **IMPRISONMENT FOR DEBT—REV. ST. §§ 990, 991.**—The intent of sections 990 and 991 of the Revised Statutes, relating to imprisonment for debt, is that in civil actions for debt the defendant shall be subject to imprisonment, and be released therefrom, precisely as he would be under the law of the state.
3. **SAME—GEN. ST. OF MASS. c. 118, § 78—REV. ST. § 990.**—Section 78, c. 118, of the General Statutes of Massachusetts, provides that a debtor who has received his certificate of discharge shall be forever thereafter discharged and exempt from arrest and imprisonment in any suit or upon any proceeding for, or on account of, any debt or demand which might have been proved against his estate. *Held*, that this express exemption of discharged insolvents from imprisonment upon provable debts was a "modification \* \* \* upon imprisonment for debt," within the meaning of section 990 of the Revised Statutes relating to imprisonment for debt.—[Ed.]

Action of contract upon a promissory note by a citizen of New York against a citizen of Massachusetts. Pending the suit, the defendant was adjudged an insolvent under the insolvent law of Massachusetts. His assignees came in and defended, but they and the debtor afterwards submitted to have the case defaulted. The defendant then set up that he had received his discharge under the state law, and moved that the execution to be issued upon the judgment should be limited so as not to run against his body. The plaintiff moved for a judgment for full costs against the assignees, and for an unrestricted execution against defendant.

*F. Dabney, (H. W. Suter with him,)* for plaintiff.

*M. F. Dickinson, Jr.,* for the assignees.

*A. Russ,* for defendant.