

United States within the district was brought into section 563, subd. 15, and 629, subd. 11. 13 St. at Large, 116.

The state courts appear to be left with the jurisdiction arising out of the ability to sue and be sued, and without power, over purely administrative proceedings, for the government of officers of the United States, under the laws of the United States. The receivership is an entire thing, provided for, controlled, and regulated by the laws of the United States through the comptroller and the courts of the United States within the district. The defendant is a citizen of the United States, within the district. The suit of the defendant, wholly without the jurisdiction of the receivership, to deprive the receiver of property within, would tend to defeat its object. Such suits are frequently restrained by injunction. High, Inj. §§ 59, 60; *Dehon v. Foster*, 4 Allen, 545.

Motion granted.

NORTON, Trustee, v. CITY OF DOVER.

SAME v. CITY OF PORTSMOUTH.

SAME v. CITY OF MANCHESTER.

SAME v. CITY OF CONCORD.

SAME v. CITY OF NASHUA.

(Circuit Court, D. New Hampshire. February 23, 1886.)

NEW TRIAL—RELEASE AFTER VERDICT.

Where there has been a release, in full, under seal, after a verdict in favor of defendant a motion for new trial, on the ground that the evidence in the former trial was false, will not be heard until the validity of the release is determined by a proper proceeding.

Motion for a New Trial.

H. D. Hadlock, for plaintiff.

William L. Foster, for defendants.

COLT, J. In the above cases brought by the same plaintiff against various defendants, it appears that since the trial the plaintiff has signed what purports to be a release, in full, under seal, in favor of the several defendants. The plaintiff contends that this release is void. Under these circumstances, however, the motion for a new trial must be postponed until the validity of the release is determined by a proper proceeding.

GELSHENEN, Assignee, etc., v. HARRIS and others.¹

(Circuit Court, E. D. Wisconsin. February, 1886.)

SET-OFF AND COUNTER-CLAIM—DEMANDS NOT IN SAME RIGHT—MALICIOUS PROSECUTION OF SUIT BY ASSIGNEE FOR BENEFIT OF CREDITORS—REV. ST. WIS. § 2656.

In an action by an assignee for the benefit of creditors, appointed in another state, to recover the purchase price of goods sold by the insolvent to a merchant in Wisconsin, damages resulting from the malicious prosecution of a former suit for the same cause of action, before the money was due under the contract, cannot be made the subject of a counter-claim under Rev. St. Wis. 1878, § 2656.

At Law.

Markham & Noyes, for plaintiff.

Flanders & Bottum, for defendants.

DYER, J. The plaintiff sues to recover the amount of an alleged indebtedness for goods and merchandise sold in October, 1884, by the firm of Henry Levy & Son, of the city of New York, to the defendants, a firm doing business in Milwaukee under the name and style of L. Harris & Sons. The complaint alleges that on the fifteenth day of December, 1884, Levy & Son made a voluntary assignment of their property and assets for the benefit of creditors, under the laws of the state of New York, and that the plaintiff was constituted their assignee in the instrument of assignment, and, as such assignee, became vested with the demand in suit, and entitled to sue for and recover the amount thereof. The allegations of the complaint are admitted by the defendants, but they interpose a counter-claim, in which they allege that the goods and merchandise in question were sold to them on a credit of four months, from December 1, 1884; that before this credit expired the plaintiff brought an action against them in this court upon said demand; that the issue in that case was whether the demand was due when the action was commenced, and that on the trial of that issue there was a verdict for the defendants. It is further alleged that the prosecution of that suit was malicious, and without probable cause; that the defendants sustained damages by reason of the wrongful conduct of the plaintiff in the way of impairment of credit and cancellation of their orders for goods, and those damages they now seek to counter-claim against the plaintiff in this second action to recover the amount of the plaintiff's demand against them. This counter-claim is demurred to on various grounds, one of which is that the cause of action stated therein is not pleadable as a counter-claim against the plaintiff.

The statute of the state provides (section 2656, Rev. St. Wis.) that where the plaintiff is a non-resident of the state, any cause of action

¹ Reported by Robertson Howard, Esq., of the St. Paul bar.