

Ass'n, 7 N. E. Rep. 844. This was held to exclude the mother of the member, who was not living with him as one of the members of his family, Id.; also his sister, who was not dependent on him for support, Supreme Council A. L. of H. v. Perry, 5 N. E. Rep. 634. By the act of 1882 the class entitled to become beneficiaries was extended to include any member of the family. Id. The designation of his "estate" as the beneficiary member is ineffective; and, if the money has been received by the executor, he holds it for those entitled to it under the by-laws of the association, if such there are; and, if there are not any such, then for those entitled under the statute of distributions. Daniels v. Pratt, (Mass.) 10 N. E. Rep. 166. Under the laws of Missouri, the beneficiaries are limited to the member's family and dependents. Knights of Honor v. Nairn, (Mich.) 26 N. W. Rep. 826.

JUDD v. BANKERS' & MERCHANTS' TEL. Co. and others.

(Circuit Court S. D. New York. June 16, 1887.)

COURTS—CONFLICT OF JURISDICTION—RECEIVER.

The rule that the court first taking cognizance of a controversy is entitled to possession and control of the subject-matter thereof to the exclusion of all other courts of co-ordinate jurisdiction applied, denying a motion for a receiver, and an injunction *pendente lite* in a suit by a creditor in a federal court to get in the assets, and distribute the property of an insolvent corporation among its creditors, where suits had already been brought in the state court by other creditors to obtain the same relief, and a receiver appointed in such suits was in possession and control of the property of the corporation.

Motion for Receiver and Injunction *Pendente Lite*.

D. C. Chatwood, for complainant.

H. B. Turner and *R. G. Ingersoll*, for defendants.

WALLACE, J. This motion for a receiver and an injunction *pendente lite*, if granted, would result in an unseemly and unnecessary interference with the jurisdiction of the supreme court of this state in the proceedings now pending in that court. The complainant by his bill asks this court to get in the assets and distribute the property of an insolvent corporation among its creditors, of whom he is one, when the state court, at the instance of other creditors, has already taken jurisdiction in suits brought against the corporation to obtain the same relief, and is now by its receiver in possession and control of the property of the corporation. Three suits are now pending in the supreme court of the state of New York, —one brought by a judgment creditor to obtain a sequestration of the property of the corporation; another brought by a holder of mortgage bonds situated similarly to the present complainant, in behalf of himself and all other bondholders, to secure an equitable distribution of the property of the corporation among its creditors; and another brought by the trustees for the bondholders in the mortgage for a foreclosure of the mortgage. Receivers were appointed in the first suit, and, after the second suit was commenced, the receivers appointed in the first suit were appointed receivers in the second suit, and all their proceedings in the first were approved by the order of the court in the second suit; so that both suits have been treated by the state court practically as one proceeding.

The action brought by the trustee for a foreclosure of the mortgage has proceeded to a decree and a sale of the mortgaged premises, and by the decree in that action it was ordered that receivers' certificates issued by order of the court in the first two suits, which had been negotiated by the receivers, and amounted to something over \$600,000 at the time of sale, should be received towards payment of the purchase money, the certificates having been made a prior lien to the mortgage by the orders of the court.

Thus it appears that the state court is now in control of all the property and assets of the corporation, and is attempting to administer them, and appropriate the proceeds to those to whom they belong. The jurisdiction of the state court is not questioned, but the bill asserts that grave irregularities have taken place in the proceedings, and that the suits have been controlled by parties acting collusively, to advance their own interests at the expense of the complainant and those similarly situated. All the averments in the bill charging fraud and collusion in the proceedings in the state court are fully met and denied by the answers of the several defendants. The trustee for the mortgage bondholders was a party defendant in the second suit. If the complainant's interests have not been properly protected in the proceedings in the state court, he has an ample remedy as a party in interest in the proceedings there, upon sufficient cause shown, to obtain redress by intervening in his own behalf.

The case is one for the application of the rule that the court which first takes cognizance of the controversy is entitled to retain jurisdiction to the end of the litigation, and to take possession and control of the subject-matter of the investigation to the exclusion of all interference by other courts of co-ordinate jurisdiction. *Williams v. Benedict*, 8 How. 111; *Taylor v. Carryl*, 20 How. 583; *Hagan v. Lucas*, 10 Pet. 400; *Buck v. Colbath*, 3 Wall. 334; *Heidritter v. Elizabeth Oil-Cloth Co.*, 112 U. S. 294, 5 Sup. Ct. Rep. 135; *Schuehle v. Reiman*, 86 N. Y. 270; *Union Trust Co. v. Rockford, R. I. & St. L. R. Co.*, 6 Biss. 197; *Sedgwick v. Menck*, 6 Blatchf. 156.

In *Young v. Montgomery & E. R. Co.*, 2 Woods, 606, 619, the court refused to assume to take possession of and administer property which was in possession of another court, and in course of administration there, although that court had granted leave to sue its receiver for the purpose.

The motion is denied.

HANKINSON v. PAGE.

(Circuit Court, S. D. New York. June 16, 1897.)

1. JURISDICTION—RAISING ISSUE BY ANSWER—SECTIONS 488, 498, CODE CIVIL PROC. N. Y.

An action was commenced against a non-resident of the state of New York by the levy of an attachment upon property alleged to belong to defendant in that state. Defendant did not appear generally, but by a special answer, "for the purpose of raising the issue as to the jurisdiction of the court." *Held*, that the qualified appearance of the defendant was not a waiver of the objection which the answer was interposed to raise; sections 488 and 498 of New York Code of Civil Procedure authorizing a defendant to present the objection by answer.

2. ATTACHMENT—LEVY—LIFE INSURANCE POLICIES—SECTION 649, CODE CIVIL PROC. N. Y.

Defendant had an interest as one of the insured's heirs at law in certain policies of life insurance. A levy under a warrant of attachment against defendant's property was made, by serving a copy of the warrant and notice upon the insurance companies, but without an attempt by the sheriff to take the policies into his actual custody. *Held*, under the circumstances, not a proper levy, under section 649, Code Civil Proc. N. Y.

3. SAME—BENEVOLENT ASSOCIATION—INTEREST OF AN HEIR AT LAW.

The interest of an heir at law of a deceased member of a benevolent association, in a sum to be raised and paid by the association on the death of a member, is attachable in New York, where common law and equity jurisdiction are blended in one tribunal.

4. SAME—LEVY ON VALID DEMAND AGAINST BENEVOLENT ASSOCIATION—CERTIFICATE OF MEMBERSHIP.

A. was a member of a benevolent association, which at the time of his death had not issued any policy of insurance upon his life, but was under a contract liability to his heirs at law to assess upon and collect from the several members of the association the sum which each member had agreed to pay on the death of another member. A levy under a warrant of attachment against P., one of such heirs at law, was made by leaving a copy of the warrant and notice with the association. *Held* a due service, and that the sheriff was not obliged to take into his actual custody a certificate of membership in such association, which had been delivered by the association to A.; it not being an evidence of debt, like a bond, note, or other instrument for the payment of money, and not falling within the category of section 649, Code Civil Proc. N. Y., requiring the sheriff, in making a levy under a warrant of attachment, to take it into his actual custody.

Motion for New Trial.

Lewis Sanders, for plaintiff.

Alfred R. Page, for defendant.

WALLACE, J. Exceptions have been filed by the plaintiff to the rulings of the referee before whom this action was tried, and a motion for a new trial is founded upon the errors alleged by the exceptions. The action was brought originally in the supreme court of the state of New York, and was removed to this court. The only question litigated on the trial before the referee was whether jurisdiction was obtained by the state court over the person of the defendant by due service of process. The defendant was a non-resident of the state, and the action was sought to be commenced against him by the levy of an attachment upon property alleged to belong to the defendant within this state. The defendant