

tion of his trust. The receiver's answer renders it unnecessary for the court to do more than direct that the petition remain on file for future action should there be occasion for it.

HOFFMAN *v.* BULLOCK *et al.*

(*Circuit Court, S. D. New York.* March 16, 1888.)

CORPORATIONS—OFFICERS AND AGENTS—FRAUDULENT COMBINATIONS—RIGHTS OF THIRD PARTIES.

An assignee for a valuable consideration of all the claims and rights of action at law or in equity of a corporation against its former directors and trustees, who, by a fraudulent combination with outsiders, succeeded in wrecking the concern, and appropriating its property to themselves, and who, by collusion and malpractice, secured the dismissal of *bona fide* suits instituted by the corporation against themselves to recover the property, has no standing in a court of equity as against such trustees, in the absence of allegation and proof that he is a creditor or stockholder of the corporation.

In Equity. On demurrer to bill.

B. C. Chetwood, for complainant.

Charles Sherwood, for respondents.

LACOMBE, J. The complainant avers that the defendants, heretofore directors and trustees of the *Ætna Axle & Spring Company*, a Connecticut corporation, did, by a fraudulent and corrupt combination with outside parties, carry out a secret conspiracy to wreck the company; that they misappropriated its funds and property to their own use, and defrauded and despoiled its creditors and stockholders, realizing by their misappropriation upwards of \$175,000 of the assets of said company; that the company has attempted, in good faith, to recover the moneys thus misappropriated, by causing actions for the same or some part thereof to be brought in its behalf against some of the defendants; but "by collusion and malpractice said suits have been dismissed, discontinued, or otherwise corruptly disposed of to the great injury of the company, its creditors, and stockholders." The bill then avers that complainant is "assignee for a valuable consideration * * * of all and singular its claims, demands, and rights of action, * * * either in law or in equity, against the defendants." By such an assignment complainant obtained no proper title to institute such a suit as this. *Graham v. Railroad Co.*, 102 U. S. 148. It was claimed on the argument that he is a creditor and a stockholder of the company. There is no such averment in the bill. If he has rights in that character he may no doubt avail of them, but he has not set out any such cause of action in this bill.

The demurrer is sustained, with leave to amend the bill.

COOK *et al.* v. COOK *et al.*

(Circuit Court, S. D. New York. March 17, 1888.)

1. EXECUTORS AND ADMINISTRATORS—INVESTMENTS—IN BONDS OF FOREIGN CORPORATION.

An investment of trust funds by a New York administrator with the will annexed, in mortgage bonds of a Pennsylvania corporation, made without order of court, is not good as against the New York beneficiaries; and if such bonds prove to be worthless, the administrator, or, he being dead, his estate in the hands of his sole legatee and devisee, is liable for the loss.

2. SAME—WASTE—LIABILITY OF EXECUTOR'S ESTATE—MEASURE OF RECOVERY.

A bill by the life-tenant and remainder-men in fee of a sum of money, to subject the estate of the administrator in the hands of his sole legatee and devisee to the payment of a *devastavit* wrought by him, set out the loss at \$8,000. The answer of the administrator's executor, and of his co-administrator, admitted that that was the amount received, but the answer of the legatee-devisee put it at "about \$7,000." The *corpus* of the fund was \$7,072.02, and there was no positive proof that the administrator in fault had received more than that sum. It was in evidence that the last payment of interest to the life-tenant was made in 1884. *Held*, that the measure of recovery against the estate in the hands of the legatee and devisee was the original *corpus*, viz., \$7,072.02, with lawful interest thereon for 1884 and each year thereafter, compounded annually.

3. SAME—MARSHALING ASSETS.

Where the sole legatee and devisee of a defaulting administrator has disposed of all the real estate gotten under his will, and the personal estate remaining in her hands is sufficient to make good the *devastavit*, a decree will not go against the real estate, and this is especially so where the grantee of such real estate is not a party to the bill.

4. SAME—RIGHTS OF CO-ADMINISTRATOR.

A decree in favor of the life-tenant and his children, remainder-men in fee of a sum of money, went against the estate of the administrator with the will annexed for a *devastavit* wrought by him. To this bill a co-administrator was a party, but there was nothing beyond his refusal to proceed against the estate to show that he was not a proper person to receive the money awarded by the decree. In addition, the trust fund was to go over upon the death of the life-tenant without children. *Held*, in New York,—where the appointment and removal of such administrators, and the proper management of the funds in their hands, are for the surrogate's court,—that the federal circuit court would not take the matter out of the surviving administrator's hands in advance of any action by the surrogate, but that the money should be paid to him.

5. DESCENT AND DISTRIBUTION—LIABILITIES OF HEIRS AND DEVISEES—EQUITY PRACTICE IN FEDERAL COURTS—FOLLOWING STATE LAWS.

Under Code Civil Proc. N. Y. §1841, for a creditor of the estate to recover against a legatee it is only necessary to show that no assets have been delivered to a surviving consort or next of kin, and under sections 1844, 1848, 1849, to recover against a devisee it must be shown that three years have elapsed without grant of letters, or after such grant, before suit, and that the debt cannot be collected of any heir, or in the surrogate's court, against the executor or against any other distributee, with any degree of diligence. *Held*, that these provisions did not, except so far as the rights of the parties arising therefrom were concerned, govern the practice in equity in such cases of the federal courts sitting in that state.

6. SAME—ACTION AGAINST SOLE LEGATEE—PLEADING.

A bill by the life-tenant and remainder-men in fee of a sum of money alleged that the will creating the trust fund had directed that it be invested; that H., who, with C., was administrator with the will annexed, had put the money in United States bonds, which he subsequently sold and then reinvested the proceeds in mortgage bonds of a foreign corporation, and that these bonds turned out to be worthless; that H. had died testate, one N. being his sole legatee and devisee, and that his estate had been wound up and turned over to said