

ingersoll Vs. Coram

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Appellant : ingersoll

Respondent : Coram

Judgement :

Ingersoll v. Coram - 211 U.S. 335 (1908)

U.S. Supreme Court Ingersoll v. Coram, 211 U.S. 335 (1908)

Ingersoll v. Coram

No. 8

Argued March 11, 12, 1908

Decided December 7, 1908

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CERTIORARI TO THE UNITED STATES CIRCUIT

COURT OF APPEALS FOR THE FIRST CIRCUIT

SYLLABUS

In this case, the Circuit Court had jurisdiction under the provision of the Act of March 3, 1875, 18 Stat. 470, 472, to enforce a lien for professional services on property within the district, although some of the defendants did not reside therein.

An objection to the jurisdiction of the Circuit Court based on the residence of defendant, although diverse citizenship exists, may be waived, and is waived if not seasonably made. *In re Moore*, [209 U. S. 490](#) .

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A decree in a suit in the Circuit Court between citizens of different states is not violative of 720, Rev.Stat., because it determines liens on distributive shares in an estate under administration in a state probate court and enjoins transmission of that share to the original administrator until satisfaction of the lien.

Quaere whether it is within the power of a state court to order property on which there is an asserted lien to be sent out of the district, thereby defeating the jurisdiction of the circuit court to enforce the lien under the Act of March 3, 1875, 18 Stat. 470, 472.

The fact that proceedings for the administration of an estate are pending in the probate court does not deprive the circuit court of the United States of jurisdiction to determine whether a lien exists in favor of citizens of another state on some of the distributive shares, the lien only to be enforced after the probate court shall have finished its functions.

Section 629, Rev.Stat., does not deprive the circuit court of jurisdiction of an action brought by a citizen of another state against an administrator to enforce a lien on the distributive share of an heir of defendant's intestate because that heir, being of the same state as the defendant, could not sue him in the circuit court.

An ancillary administrator in one jurisdiction is not in privity with an ancillary administrator in another jurisdiction, and a judgment against the one is not *res*

judicata and a bar to a suit by the other. *Brown v. Fletcher's Estate*, [210 U. S. 82](#)

Where the case in which counsel is employed on a contingent fee is so settled that the clients receive as much as though the contingency on which the fee depends were realized, and the settlement is achieved after a trial and by the service of the counsel, his contract is performed, and he is entitled to the agreed compensation.

An express executory agreement in writing whereby the contracting party sufficiently indicates an intent to make some identified property security for a debt or other obligation creates an equitable lien on such property, and in this case an agreement by contestants to pay counsel a contingent fee if the propounding of a will is prevented created a lien on the distributive shares in the estate to which those contestants became entitled on a settlement of the matter effected by the successful services of the counsel so employed.

148 F. 169 reversed; 136 F. 689 modified and affirmed.

The petitioner, as administratrix of the estate of Robert G. Ingersoll, deceased, sued the respondents and certain other persons, in the Circuit Court of the United States for the District

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of Massachusetts, to subject certain interests in the estate of Andrew J. Davis to a lien which is alleged to have accrued to her intestate by the agreement which is set out in the opinion, and by the laws of Montana, in which state the services were rendered.

Andrew J. Davis, a man of great wealth, a citizen of Montana, died, leaving property in that state and in Massachusetts. By a will, which was offered for probate in Montana, all of his property was left to his brother, John A. Davis. Certain other of his next of kin, five in number (referred to in the bill as the "five heirs"), associated to contest the probate of the will. Henry A. Root, one of the respondents, and a nephew of Andrew J. Davis, agreed with the four other

contestants to conduct the litigation and to procure evidence and counsel at his own expense, receiving therefor an assignment of a part of the prospective distributive shares of the others. Joseph H. Coram, another respondent, also acquired an interest in the prospective shares of some of the contestants. Robert G. Ingersoll, the petitioner's intestate, was engaged as counsel to conduct the litigation, and Root and Coram entered into the agreement with him, which will hereafter be set out.

Upon the trial of the contest, the jury disagreed. Pending the preparation for the second trial, an agreement of compromise was made by which Ingersoll's clients received a larger portion of the estate than though Davis had died intestate. It is alleged that this was the result of Ingersoll's services as counsel. "By reason," it is alleged,

"and in consideration of the prosecution of said contests, and the force, effect, and stress thereof, as against the proponent of such alleged will, in preventing the admission thereof to probate, and in consideration of the determination of said controversy and litigation, and for no other consideration or reason,"

was the compromise effected. It is hence further alleged that the

"will was defeated insofar as it could affect the rights, shares, or interest in and to said estate of said five heirs mentioned in

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said agreement and promise made and delivered by said Root and Coram to said Robert G. Ingersoll, for as much as they were entitled to only 350 eleven hundredths of said estate as such heirs at law of Andrew J. Davis, deceased, and got absolute right and title to 515 1/2 eleven hundredths thereof, through the prosecution of said contests and decree determining the same."

250 eleven hundredths, it is alleged, were allotted directly to said five heirs and 265 1/2 eleven hundredths for their use and benefit, to Charles H. Palmer (a respondent here) and Andrew J. Davis, Jr., trustees. A copy of the decree was

annexed to the bill and made part of it. And it is alleged that, by reason of said agreement and the fulfillment thereof and the "provisions of the laws and statutes of Montana," which are set out, an attorney's lien accrued in favor of said Ingersoll and his legal representatives,

"and is existing and is in force and effect upon the portions, parcels, and interests of, in, and to the funds and other property of said Andrew J. Davis, deceased, so acquired for said five heirs."

That Root and Coram have conveyed away the real estate vested in them by the decree determining the said will contests, and that the distributions under said decree

"have practically exhausted the funds and property of said estate in the State of Montana, and that, by reason of the employment of Ingersoll and the services rendered by him, and by the promises of payment, an equitable lien exists on the funds and effects acquired by said heirs, situate in Boston, Massachusetts,"

and that such funds and effects should not be distributed or carried away

"in default of payments of said indebtedness owing by Root and Coram to the estate and legal representatives of Robert G. Ingersoll, deceased, but that said funds and effects situate in Boston, Massachusetts, should be and remain subject to said indebtedness, and to be resorted to for the payment thereof."

It is alleged that John H. Leyson is the duly appointed, qualified, and acting administrator of the estate of Andrew J. Davis, deceased, situate in Massachusetts, and has custody of the funds and effect acquired by Root and his associates, and

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upon which the said lien exists in favor of the estate and legal representatives of Ingersoll, and that, if such funds and effects should be distributed, the lien will be defeated.

The death of Ingersoll in the State of New York is alleged, and the appointment of Eva A. Ingersoll, administratrix, by the Surrogate's Court of the County of Westchester, of that state, and her qualification. And it is alleged that she was subsequently appointed administratrix of his estate by the Probate Court of the County of Suffolk, Commonwealth of Massachusetts, situate in that commonwealth, and that she duly qualified as such. It is alleged that the estate of Andrew J. Davis, situate in Boston, and in the hands of said John H. Leyson as administrator, consists of money, convertible stocks and bonds of the value of \$450,000, after paying expenses of administration, of which funds and effects Coram and other parties for whom Ingersoll prosecuted said will contest are entitled, by virtue of the decree of the district court of the State of Montana, directly and through Charles H. Palmer and Andrew J. Davis, Jr., to 515 1/2 eleven hundredths, "acquired as part of the fruits of the labors of said Robert G. Ingersoll in the prosecution of said will contests." That Root, Coram, and their associates have petitioned the Probate Court of Suffolk County to order distribution of said shares of said funds and effects to them. That all of said 515 1/2 eleven hundredths, except the interest owned by Sarah Maria Cummings and the interest owned by Ellen S. Cornue, are subject to the lien of Ingersoll. It is alleged that the interests of Elizabeth S. Ladd and Mary L. Dunbar have been transferred to Root and Coram.

A conspiracy and purpose of Coram and Root to defeat the lien of Ingersoll are alleged, and that distribution of the estate in Massachusetts is sought as a means thereto; further, that, if the funds and effects be removed from Massachusetts or distributed to Root and Coram before the representatives of said Ingersoll have an opportunity to enforce their lien, the same will be placed beyond their reach and the payment of

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the indebtedness secured thereby defeated; that the funds and effects remaining in Montana will be required and used to pay indebtedness and expenses of administration there, and that Root and Coram have no tangible property other than their shares and interest in the estate of Davis.

It is further alleged that petitioner brought suit in the District Court of the State of Montana in her name, as administratrix of Robert G. Ingersoll, to enforce payment of said claim existing in favor of the estate and legal representatives of Ingersoll. That Root and the other defendants therein appeared and demurred to the complaint on the ground that the same did not state facts sufficient to constitute a cause of action, but did not specify or raise the objection that she was not qualified to prosecute said suit, although she alleged her appointment as administratrix by the surrogate's court of New York. That, upon her urging the pendency of said suit against the petition for distribution filed by Root and Coram and their associates, it was objected that said suit had not been brought by an administrator of Ingersoll appointed in Montana. The court sustained the objection. That thereupon John S. Harris was appointed administrator in Montana, and substituted in said suit for petitioner. The cause coming on to be heard in the District Court of Montana, Root objected to the introduction of any evidence on the ground that the complaint therein did not state facts sufficient to constitute a cause of action. The motion was sustained, and, without further proceedings, the court granted a nonsuit and dismissed the complaint on the alleged ground that it did not state facts sufficient to constitute a cause of action; in consequence no trial thereof has been had, nor has the claim and lien of Ingersoll even been adjudicated, nor is it barred by any statute of limitation.

The bill prays an injunction against Leyson to restrain him from delivering, and against respondents to restrain them from receiving, said funds and effects, and for the appointment of a receiver, discovery of Coram's interest, and judgment for

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the same, and that it be declared a lien on such interest. Judgment is prayed against Root for \$95,000, with interest, and that the sum be declared a lien on his shares and interests. What else is prayed need not be noticed.

There were demurrers to the bill that went to the parties, the jurisdiction of the court, to the merits, and that the judgment of the District Court of Montana constituted a bar. The grounds of demurrer to jurisdiction were expressed in the

demurrer filed by Root and Coram and Herbert P. Cummings, executor of the last will and testament of Sarah Maria Cummings, one of the five heirs, as follows:

"2. These defendants also demur to the bill of complaint upon the further ground that this court has not jurisdiction of this action, because it appears from the said bill that this action is brought to secure from this court a writ of injunction staying proceedings now pending in the Probate Court in and for the County of Suffolk and Commonwealth of Massachusetts, to distribute the funds and effects of the estate of Andrew J. Davis, deceased, situate in the State of Massachusetts, among the persons entitled thereto, or to otherwise dispose of said funds and effects, and this Court is forbidden by 720 of the United States Revised Statutes from granting a writ of injunction to stay proceedings in any court of a state."

The demurrer of Leyson was more general, stating that the court "had no jurisdiction to grant the relief prayed for in the bill of complaint or any part thereof." And Andrew J. Davis particularized this by the specification that to enjoin the disposition of property in the hands of Leyson as administrator

"would be an interference with the proceedings of the Probate Court of Suffolk County, having jurisdiction of the matter, and would be unauthorized and illegal."

The demurrers were overruled except as against certain parties, and except so far as the bill claimed a statutory lien. The court said:

"No statutory lien can be maintained, and that portion of the bill must be regarded as ineffectual; and, as it is specially demurred to, it must be stricken out."

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F. 418. The bill was amended in compliance with the order of the court, making Charles H. Ladd, individually and as administrator of the estate of Elizabeth S. Ladd, a party. The bill, however, was subsequently ordered to be dismissed as to him, Mary Louise Dunbar (one of the five heirs), and Herbert R. Cummings, executor. 132 F. 168. They seem, however, to have been regarded as parties until

the final disposition of the case, for they joined Coram, Root, and Palmer in an answer. Leyson filed a separate answer. In the answers, some of the allegations of the bill were denied and others admitted. The answers also pleaded in bar of the suit the proceedings and judgment in the action brought in the District Court of Silver Bow County, State of Montana. Proofs were taken, the allegations of the bill were found to be true, and a decree entered for petitioner. 136 F. 689. Root, Coram, and Palmer took an appeal to the circuit court of appeals, the other respondents declining to join them, which court reversed the decision by a divided court. 148 F. 169. This certiorari was then granted.

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MR. JUSTICE Mc KENNA, after stating the case as above, delivered the opinion of the Court.

A question of jurisdiction occurs. It was discussed somewhat in the original briefs of counsel, but questions were submitted to them as appropriate to elicit further discussion. * We find it, however, more convenient and more conducive to brevity, in passing on the question of jurisdiction, to be somewhat

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general. The petitioner (and her intestate) were citizens of New York. The defendants in the suit below, nine in number, were citizens of Massachusetts. Coram was a citizen of Massachusetts. Root and Andrew J. Davis, trustee, were citizens of Montana. Leyson was also a citizen of Montana. It is hence contended that, while there was diversity of citizenship when the suit was brought, there was no jurisdiction against Root and Andrew J. Davis, they not being inhabitants of the district. The suit against them, it is further contended, was without jurisdiction also, because it was not brought either in the district of the residence of the plaintiff or the defendant. And this, it was said, was recognized by the bill, which prayed an order for the absent defendants to appear and plead in accordance with 738 of the Revised Statutes, now Act of March 3, 1875. 18 Stat. 470, 472, c. 137. That act provides for notice to absent defendants in any suit "to enforce any legal or

equitable lien . . . or cloud upon the title to real or personal property within the district." And it is urged that the circuit judge said that the proceeding could only be sustained under that act.

The objection that Massachusetts was not the district of the residence of either Root or Davis was not made to the bill. The objection to the jurisdiction made by the demurrers was to the jurisdiction of the circuit court to interfere with or stay proceedings in a probate court of the Commonwealth of Massachusetts. It makes no difference how the parties were served or brought in. Being in, all objections to the bill should have been made. The bill prayed a personal judgment against Root as well as a lien upon his share, and those represented by Coram, in the hands of Leyson as administrator of Davis, deceased, and that Leyson be restrained from paying them and Root and Coram from receiving or carrying them away. And general relief was also prayed. In other words, the whole case arising from Ingersoll's service and the remedies for that service was presented. And to this case the defendants were summoned to answer . They did answer as to the jurisdiction of the court as to subject matter, as to the relation of the

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courts of the United States to the courts of Massachusetts. They did not answer as to the jurisdiction of the court as to parties, as to the rights of the parties to be sued in the district of their residence. The latter objection may be waived, and is waived by not being made. *In re Moore*, [209 U. S. 490](#) .

To decide what jurisdiction the circuit court exercised, we must consider the decree. It found all of the allegations of the bill to be true, and that there was due and owing to the plaintiff (petitioner here), on the contract executed by Coram and Root, the sum of \$95,000, with interest, amounting in all to the sum of \$138,010.83. It adjudged Root to be personally indebted and liable for that sum, and awarded execution against him, and for any balance that should be due if the property upon which the lien was declared, as presently mentioned, should not satisfy such indebtedness; that Coram was personally obligated and liable for the payment of said indebtedness upon the full amount which he had received, or

should receive, from the shares of the estate of Andrew J. Davis, deceased, acquired for the five heirs mentioned in said agreement, or either of them, under or pursuant to the decree of the District Court of the State of Montana. It was also found and decreed that there was in the State of Massachusetts, in the hands of John H. Leyson, as administrator of Andrew J. Davis, deceased, \$337,862, and 137 bonds of the United States, and 170 bonds of the Butte & Boston Consolidated Mining Company, of which money and bonds and the increase thereof, the said five heirs of Andrew J. Davis, deceased, and their legal representatives and successors in interest, were entitled to receive 515 1/2 eleven hundredths under and pursuant to the decree of the District Court of the State of Montana, and of which money and bonds and the increase thereof Coram and Root were entitled to have and receive 415 1/2 eleven hundredths parts on distribution of such money and bonds by the proper court having jurisdiction thereof in the administration and distribution of the estate of Andrew J. Davis, deceased. Upon such 415 1/2 eleven hundredths

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parts petitioner was decreed to have a lien "subject to all proper and lawful administration," as a part of the estate of Andrew J. Davis, deceased,

"pursuant to the orders and decrees or judgments of the Probate Court of Suffolk County, Massachusetts, now having probate jurisdiction thereof, or any court which may hereafter have probate jurisdiction . . . to administer the same as part of the estate of said Andrew J. Davis, deceased, in the due and lawful course of administration thereof."

A lien is decreed upon said money and bonds, and foreclosed, subject to the terms of the decree, wheresoever said money and bonds may be taken or removed, whether within or without the State of Massachusetts, and in the custody of whomsoever the same may come,

"subject only to the proper and lawful probate and administration . . . pursuant to the orders, judgments, or decrees of the Probate Court of Suffolk County, in the

State of Massachusetts, now having probate jurisdiction thereon . . . to administer the same as a part of the estate of Andrew J. Davis, deceased, in the due and lawful course of administration thereof."

And it was decreed that, as soon as the probate administration is finished and distribution is ordered by the probate court having jurisdiction, that Leyson, as administrator, or his successor in custody thereof, should set apart and bring into court the said 415 1/2 eleven hundredths of said money and bonds, to be applied to the satisfaction of the lien of complainant. It was decreed that each and all of the injunctive and restraining terms and commands of the interlocutory injunction order be made perpetual, and Leyson was enjoined and restrained, as administrator, from removing out of Massachusetts 415 1/2 eleven hundredths parts of the money and bonds in his possession,

"unless and until the proper court within the State of Massachusetts, having probate jurisdiction of such money and bonds, by its final order, judgment, or decree, directs such John H. Leyson, as such administrator, to remove such 415 1/2 eleven hundredths of such money and bonds out of the State of Massachusetts. "

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We have made this epitome of the main provisions of the decree to show how careful the court was to require the observance of its direction expressed in its opinion that the decree should declare that nothing in it was intended to contravene, or should contravene, "any action of any probate tribunal in Massachusetts with reference to distribution, or to any order or judgment remitting to the courts of the domicile."

The decree therefore deals exclusively with the parties. It adjudges what contract they made, the extent of their obligation, and how that contract was secured. The remedies awarded are executed through the parties, and through Leyson only as he holds property to be delivered to the parties. No action of the Probate Court of Suffolk County is attempted to be restrained or limited or trenched upon, nor the

property in its possession disturbed. And yet it is urged that the suit that sought this purpose and a decree that executes this purpose transcend the jurisdiction of a circuit court of the United States.

The proposition has been discussed at length by counsel, many cases cited and arguments advanced based upon the respective functions of courts of equity and probate.

The respondents especially rely upon the pendency of proceedings in the Probate Court of Suffolk County, and, as a corollary, that the property was in the possession of the probate court and under its jurisdiction, and therefore not within the jurisdiction of the circuit court. Respondents express and illustrate the latter conclusion in various ways. Their fundamental postulate, however, is that the circuit court has not power to disturb the possession of the property by the probate court or do any act which may interfere with the free exercise of jurisdiction by the probate court. This postulate is argued at length and many cases are cited. Besides, a statute of Massachusetts is relied upon which provides that, upon the settlement of an estate, and after the payment of all debts for which the same is liable in that commonwealth, the residue of the personal estate may be distributed and disposed

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of in the manner provided by the will of a deceased, if he left any, or according to the laws of the state or country of which he was an inhabitant,

" or, in the discretion of the court, it may be transmitted to the executor or administrator, if any, in the state or country where the deceased had his domicil, to be there disposed of according to the laws thereof. "

(Italics ours.)

We think, however, a lengthy discussion is not necessary. The controversy presented by the bill was one between citizens of different states, and there was that ground of jurisdiction in the circuit court, being a court of the United States.

One object of the bill, among others, was to declare and foreclose a lien upon property within the district, and there was that ground of jurisdiction, and we do not think that jurisdiction thus established and supported was taken away by the mere fact that the settlement of the estate of Davis was pending in the Probate Court of Suffolk County. No interference with that court was sought or decreed, as we have seen. Rights between the parties, arising from their transactions and contracts, were only adjudged and only decreed to be redressed when the probate court should have finished its functions. Indeed, it may even be that the circuit court was too restrictive in the exercise of its power, for it may be disputed whether it is within the power of a state court to order property upon which there is a lien sent out of a district, and thereby defeat the jurisdiction of a court of the United States to enforce such lien in cases where they have jurisdiction under the Act of March 3, 1875. This question, however, does not arise, nor any question depending upon it, and the line of cases of which *Wabash Railroad v. Adelbert College*, [208 U. S. 38](#) , is an example does not apply, nor do the cases cited by respondents, but the case falls within the principles announced in *Payne v. Hook*, 7 Wall. 425,, and *Byers v. McAuley*, [149 U. S. 608](#) , and cases there cited.

The power of the court of equity to subject the share of a person under a lien, "and yet in the hands of an executor,"

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to the payment of his debts, has been decided in Massachusetts. *Ricketson v. Merrill*, 148 Mass. 76, 19 N.E. 11. The same in principle is *Davis v. Newton*, 6 Met. 537, where it was held that the distributive share of an insolvent debtor in the hands of an administrator passed to his assignee, and that the administrator could not withhold it from the assignee.

In *Lenz v. Prescott*, 144 Mass. 505, it was decided that the probate court does not take cognizance of assignments of their interests, made by legatees or distributees, but deals only with those primarily entitled to the legacies or distributive shares, and many cases were cited. The court therefore sustained a bill in equity to ascertain the validity and construction of an assignment of an

interest in an estate. See also *Green v. Gaskill*, 175 Mass. 265, where the probate jurisdiction of the probate court and its equity jurisdiction in relation to other courts is explained, and it is decided that administrators and executors have a right to have their accounts adjusted and the amounts due to or from them determined in the probate court, on its probate side, and in the usual probate proceedings; but, when the amount for which they are liable is so determined, may, by a bill in equity, be compelled to pay to those entitled their share of the property of the deceased. And this being the power of the courts of equity of the state, a like power certainly may be exercised by the federal courts.

It is further objected that there is no property of the respondents in Massachusetts. The argument which is urged to support the objection is difficult to state. It seems to draw a distinction, under the laws of Massachusetts, between the will of Andrew J. Davis and the decree of the Montana court admitting the will to probate. "The probate court," respondents say,

"might and did accept the decree of the Montana court as proof that the will ought to be allowed. It could not and did not accept the decree as establishing that the property in Massachusetts should be disposed of otherwise than as the will provided."

And from a consideration of the laws

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of Massachusetts, respondents conclude that (we quote the language of counsel),

"no part of the property in Massachusetts can therefore in any sense be said to belong to the defendants in the suit. All of it must by law either be paid over according to the will or be transmitted to Montana, to be distributed as the court may direct."

We cannot refrain from saying that it is hard to believe that respondents would like to be taken at the full sense of their words, and we are quite sure that the Probate Court of Suffolk County will regard not the will as propounded for probate, but the

will as qualified by the decree, as determining the rights of the parties. At any rate, it is only upon the shares which that court will distribute that the decree of the circuit court will operate.

Again, it is charged that the right of the petitioner's intestate was derived from Root, and as he, it is further contended, could not have sued to establish his right to a share in the funds of the administrator, the latter and he being citizens of Montana, that the petitioner was equally disqualified to establish and recover Root's share of the property. The argument is that she is seeking to enforce a right of Root against the administrator, arising on an equitable assignment by Root to her intestate, and she is therefore, it is said, suing to recover as assignee of a chose in action upon which the assignor could not sue, because his citizenship is the same as that of the administrator in Massachusetts. Rev.Stat. 629. There are several answers to the contention. It is certainly very disputable if an interest in a distributive share of an estate is within the statute. Again, she is suing primarily on the obligation of Root to her intestate, to secure which a lien was given on Root's distributive share, and besides, again, she sues as administratrix, and she is a citizen of a different state from Leyson. [Sere v. Pitot](#), 6 Cranch 333; [Chappedelaine v. Dechenaux](#), 4 Cranch 308; [Bushnell v. Kennedy](#), 9 Wall. 387; [Coal Co. v. Blatchford](#), 11 Wall. 172; [Rice v. Houston](#), 13 Wall. 66.

Respondents assert the identity of the action in Montana

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with the present suit, and upon that identity they urge that such action constitutes *res judicata*. Petitioner denies the identity of the actions, and urges besides that there is no such privity between the parties as to make the Montana action *res judicata* of the pending case. In support of the latter contention, petitioner urges that an ancillary administrator in one jurisdiction is not in privity with an ancillary administrator in another jurisdiction, and that therefore a judgment against one is not a bar to a suit by the other. And this was the ruling of the circuit court. The circuit court of appeals took the contrary view, and rested its judgment upon the conclusive effect of the Montana action.

We shall assume that there is identity of subject matter between the Montana action and that at bar, but the question remains, was there identity of parties? An extended discussion of the question is made unnecessary by the case of *Brown v. Fletcher*, [210 U. S. 82](#) . In that case, a suit in equity against Fletcher, brought in his lifetime, was revived after his death, and a decree obtained. Fletcher resided in Michigan, where he died leaving a will, which was duly probated in the Probate Court of Wayne county in that state, in which the decree of the Massachusetts court was filed as evidence of a claim against the estate. Its effect as such was denied, and the case was brought here by writ of error. Replying to the contention of plaintiff in error, that the Michigan executor and the administrator with the will annexed of Fletcher's estate in Massachusetts were in such privity that the decree was conclusive evidence of it in the proceedings in Michigan, this Court held that the decree was not binding upon the Michigan executor or the estate in his possession, citing [Vaughan v. Northup](#), 15 Pet. 1; [Aspden v. Nixon](#), 4 How. 467; [Stacy v. Thrasher](#), 6 How. 44. The latter case was quoted from as follows:

"Where administrations are granted to different persons in different states, they are so far deemed independent of each other that a judgment obtained against one will furnish no right of action against the

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other, to affect assets received by the latter in virtue of his own administration; for, in contemplation of law, there is no privity between him and the other administrator. See Story, Confl. of Laws 522; *Brodie v. Bickley*, 2 Rawle 431."

[McLean v. Meek](#), 18 How. 16; *Johnson v. Powers*, [139 U. S. 156](#) , were also cited, and it was said that the "doctrine was enforced in Massachusetts. *Low v. Bartlett*, 8 Allen 259."

Respondents insist that this doctrine has no application to the Montana judgment, and urge that the latter was a bar of the pending suit (1) because it was a judgment on the merits, and (2) because such a judgment

"against an ancillary administrator in the suit brought by him is conclusive as to that cause of action against the domiciliary or any other ancillary administrator."

And this is said to follow from the proposition which respondents advance that "the authorized act of an ancillary administrator as to property of the intestate within his jurisdiction is binding everywhere," and it is hence concluded that a suit brought by an ancillary administrator is subject to the same principle as an act done touching tangible property. That the argument by which this conclusion is supported has strength is established by the fact that the circuit court of appeals yielded to it, and it is said to be sanctioned by [Biddle v. Wilkins](#), 1 Pet. 686; *Wilkins v. Ellett*, [108 U. S. 256](#) ; *Talmage v. Chapel*, 16 Mass. 71. But, as these cases preceded *Brown v. Fletcher*, they must be regarded as consistent with it. Besides, in that case, *Johnson v. Powers*, [139 U. S. 156](#) , was cited as establishing, on the authority of *Aspden v. Nixon* and *Stacy v. Thrasher*, *supra*, *Low v. Bartlett*, 8 Allen, 259, the doctrine that a judgment recovered against the administrator of a deceased person in one state is no evidence of debt in a subsequent suit by the same plaintiff in another state, either against an administrator, whether the same or a different person, appointed there, or against any other person having assets of the deceased. That there is a certain amount of artificiality in the doctrine was pointed out in *Stacy v. Thrasher*, and that it leads to the inconvenience

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and burdensome result of retrying controversies and repeating litigations. The doctrine, however, was vindicated as a necessary consequence of the different sources from which the different administrators received their powers, and the absence of privity between them, and that the imputations against it were not greater than could be made against other "logical conclusions upon admitted legal principles." It is not necessary, therefore, to review in detail the argument of respondents. Its fundamental concept is that the authorized act of an administrator as to property of the intestate within his jurisdiction is binding everywhere, and it is said that a suit brought by an administrator is subject to the same principle. The generality of the conclusion, however, counsel immediately limits by the concession that it does not include a suit brought against an administrator,

whether he successfully or unsuccessfully defends it. In other words, the principle is true only of an action brought by an ancillary administrator to enforce a claim in behalf of the estate, and judgment goes against him. But counsel even limits this again, and says it would not be binding

"in the sense of creating a personal liability for costs, if costs be awarded, or otherwise, but it is binding in the sense that the cause of action has been effectively disposed of."

That is, as counsel explains, merged in the judgment. We do not think that the doctrine announced in *Brown v. Fletcher, supra*, admits of these distinctions, and surely the estoppel of a judgment must be mutual. The argument of respondents contends for the contrary; it makes a judgment against an ancillary administrator binding against other administrators, but not binding for them. We think, therefore, that the Montana judgment is not a bar to the pending suit.

On the merits, there are two propositions: (1) did the complainant establish the existence of a debt due from Coram and Root to Ingersoll? (2) did she establish the existence of a lien? On neither of these propositions did the court of appeals pass; the circuit court decided them in favor of complainant.

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We need not recite the evidence. The circuit court found, and, we think, rightly found, that the agreement sued on was performed. In other words, that the will of Davis was defeated, and that the contestants got their shares through the services of Ingersoll. The form in which the defeat was expressed is unimportant. The will as propounded was defeated. As propounded, it cut them off from inheritance. As qualified in probate, by compromise more property was received than would have come to them by inheritance. And the evidence leaves no doubt that it was brought about, to quote the bill, "by the force, effect, and stress" of the contest and by the services which it is admitted Ingersoll rendered, and from the belief that the will as propounded would not receive probate and would only receive probate when so qualified as to recognize the rights of the contestants as heirs of the

estate. That it did not do so was its defect, and to make it do so was the purpose for which they employed Ingersoll and which his services achieved. There was performance therefore of his contract.

The next question is, does the evidence establish the existence of the lien? An affirmative answer must be given. It is manifest that payment to Ingersoll was dependent upon success, but it is equally manifest that he relied upon more than the personal responsibility of the parties. The so-called five heirs, Elizabeth S. Ladd, Ellen M. Cornue, M. Louise Dunbar, Ellen Cornue, and Henry A. Root, entered into an agreement in which it was recited that controversies had arisen in regard to the will, and that Root had rendered services and expended money in behalf thereof, and had undertaken "to procure evidence, counsel, and such other needs" as were necessary for opposing the will and obtaining for the others their "respective rights and shares" of the estate, and in consideration thereof there was assigned to Root and one Gideon Wells one-third part of each of their interests to reimburse Root for the moneys he had expended or should expend or the liabilities which he might incur on account thereof. And it was agreed

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that the assignment was to be in full for past or future liabilities. Root, on his part, agreed to employ counsel and to do all things necessary to secure the interests of the other parties.

It is alleged in the complaint and admitted by the answer that Coram acquired the remaining interests of Elizabeth Ladd and Mary L. Dunbar, and that the interests so acquired were dependent upon the prosecution of the objections to and contests of the validity of the will until the shares of the five heirs should be secured to them by a grant from the proponent of the will or by the decree of the District Court of Montana. This being the situation, Ingersoll wrote to Root as follows:

"May 1st, 1891"

"My dear Root: Do not know whether I can get the money, but feel sure I can raise \$25,000 -- have already secured \$13,000."

"Now, there is another thing: I suppose it is best for you and I to have a specific and definite understanding in regard to my fee. Of course, if you should lose the case, you could not pay. We can raise money enough to pay expenses and, of course, I shall want expenses, but the real question is as to what I am to have in case of success and how that is to be secured -- *i.e.*, what papers are necessary, etc."

"Let me hear from you."

"Yours,"

"R. G. Ingersoll"

To which Coram and Root replied as follows:

"Butte City, Mont., August 17, 1891"

"R. G. Ingersoll, Esq., Butte City, Montana."

"Sir: We agree that for your services in the contest of Maria Cummings and Henry A. Root against the probate of the alleged will of A. J. Davis, deceased, rendered and to be rendered, that your fee, in case the will is defeated and our clients get their shares, shall be one hundred (100,000) thousand dollars, and that your expenses and disbursements shall be paid in any event. "

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"There is to be no personal obligation against J. A. Coram in the event that the interests represented by Henry A. Root are unsuccessful, and in no event is the said J. A. Coram obligated except to pay such fee out of the funds secured from the estate of A. J. Davis, deceased, by Maria Cummings, Lizzie S. Ladd, M. Louise Dunber, and Mrs. Ellen S. Cornue and Henry A. Root."

"Henry A. Root"

"J. A. Coram."

It is evident, therefore, that Ingersoll asked for security in a definite and written form. We do not think it can be said that he sought only a promise to pay. That followed from his employment, and, besides, Coram stipulated against personal liability, but did obligate himself to pay "out of the funds secured from the estate." And this is the test of the agreement. It is the exception that establishes that, as to Root, there was a personal and property obligation; as to Coram, a property obligation. It is confirmed by excerpts from the letters of Root, set out in the complaint and introduced in evidence. In those letters, he expresses a desire "that Mrs. Ingersoll should realize out of the Davis estate as much as possible," and would "bend every effort" to that end. And, explaining the agreement, he said that Ingersoll "was to receive \$100,000 for moneys collected from the Davis estate for his services," and assured Mrs. Ingersoll that he would do everything in his power to see that she received "as much from that fund" (referring to the estate in Boston).

The sufficiency of the agreement of August 17, 1891, to create a lien, seems not to have been seriously questioned in the circuit court upon the argument of the demurrer. However, the court said that,

"upon all settled rules with reference to the construction of such instruments, we cannot doubt that this one of August 17, 1891, created a lien on the funds therein referred to in behalf of Mr. Ingersoll."

On the final hearing, the effect of the instrument was contested, and the court adhered to its ruling, saying:

"Whether or not the particular

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agreement creates a lien is a matter of construction. In this case, the fact that there was no primary personal responsibility on J. A. Coram specially serves to stamp the agreement in issue as declaring a purpose to create a lien. Therefore,

on the whole, we hold that, on this final hearing on bill, answer, and proofs, the bill must be sustained."

The conclusion of the court is sustained by authority. In [Wylie v. Coxe](#), 15 How. 415, a contract was made with an attorney for the prosecution of a claim against Mexico to pay him a contingent fee of five percent out of the fund awarded. It was held that the agreement constituted a lien upon the fund. In [In re Paschal](#), 10 Wall. 483, in the letter retaining Paschal, it was said that his compensation would depend upon the action of a future legislature, "unless a recovery is had in the suit, in which event I shall feel authorized to let you retain it out of the amount received." It was held that, in accordance with the prevailing rule in this country, Paschal had a lien on the fund in his hands for disbursement and professional fees. The case was cited in *McPherson v. Cox*, [96 U. S. 404](#) , [96 U. S. 417](#) , and the doctrine repeated. See also *Central Railroad v. Pettus*, [113 U. S. 116](#) ; *Louisville &c.; Railroad Company v. Wilson*, [138 U. S. 501](#) , [138 U. S. 507](#) . In *Walker v. Brown*, [165 U. S. 654](#) , it was held that every express executory agreement in writing whereby the contracting party sufficiently indicates an intention to make some particular property, real or personal, or fund, therein described or identified, a security for a debt or other obligations creates an equitable lien on the property so indicated. This was an application of the doctrine of *Fourth Street Bank v. Yardley*, [165 U. S. 634](#) , and *Ketchum v. St. Louis*, [101 U. S. 306](#) . These cases are not opposed by [Trist v. Child](#), 21 Wall. 441, and [Wright v. Ellison](#), 1 Wall. 16. In the latter case, it is said that it is indispensable to the lien thus created that there should be a distinct appropriation of the fund by the debtor and an agreement that the creditor should be paid out of it. These conditions are satisfied in the case at bar.

The other contentions of respondents assert a defect of parties

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and error in the decree as to the amount of interest adjudged to Root and Coram in the property. In the first contention we do not concur.

The second contention is justified. We do not think, however, that it is necessary to enter into all of its details, with some of which, we may say, we do not agree. We think that the circuit court rightly, as we have already pointed out, adjudged that the five heirs were entitled, by virtue of the final decree in Montana, to $515 \frac{1}{2}$ eleven hundredths of the estate in Massachusetts, and in adopting, as we think it did, in making division among them according to intestacy -- that is, in proportion to the shares they would have taken in case Davis had died intestate. Those shares the bill alleged and the answers admitted would have been as follows: Sarah M. Cummings and Elizabeth S. Ladd, one eleventh each; Henry A. Root, Ellen S. Cornue, and Mary Louise Dunbar, one twenty-second each -- in all $350 \frac{1}{11}$ eleven hundredths of the estate. But there was error in adjudging the interest remaining in Sarah Maria Cummings and Ellen S. Cornue, after the assignment of one-third of their interest to Root, to be respectively $62 \frac{2}{3}$ eleven hundredths and $33 \frac{1}{3}$ eleven hundredths. The bill shows that they were entitled respectively to one hundred eleven hundredths and fifty eleven hundredths of the amount they, as two of the five heirs, would have been entitled to if Davis had died intestate -- that is, those shares of three hundred and fifty eleven hundredths. But the amount was increased by the decree in Montana to $515 \frac{1}{2}$ eleven hundredths, and their shares thereof necessarily increased. In other words, as they were entitled respectively to two sevenths and one-seventh of the first amount, they are entitled respectively to two sevenths and one-seventh of the second amount, to-wit, $147 \frac{4}{14}$ eleven hundredths, and $73 \frac{9}{14}$ eleven hundredths, one-third of which amounts was assigned to Root. There were left in them respectively, therefore, $98 \frac{4}{21}$ eleven hundredths and $49 \frac{2}{21}$ eleven hundredths. To Root, as we have seen, they assigned one-third of their shares, and there was also assigned to him one-third of the shares

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of Elizabeth S. Ladd and Mary Louise Dunbar, making, with the one-seventh to which he is entitled in his own right, $220 \frac{13}{14}$ eleven hundredths. Coram is entitled as assignee to the other two thirds of the shares of Ladd and Dunbar, to-wit, $147 \frac{4}{14}$ eleven hundredths, making the total in him and Root of $368 \frac{3}{14}$

eleven hundredths instead of 415 1/2 eleven hundredths, as stated in the decree. The decree must be modified accordingly.

The decree of the circuit court of appeals is reversed and that of the Circuit Court is modified as above indicated, and as modified, affirmed.

MR. JUSTICE HOLMES and MR. JUSTICE MOODY dissent.

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"1. Has the circuit court jurisdiction to ascertain and declare a lien upon property in the possession of the administrator appointed by the Probate Court for the County of Suffolk and State of Massachusetts?"

"2. Has the circuit court jurisdiction to enforce by foreclosure a lien upon property so situated?"

"3. Has the circuit court jurisdiction to determine the shares of Root and Coram in the property so situated?"

"4. Has the circuit court jurisdiction, upon the pending bill, either in its present form or as it might be amended, to direct that Leyson, Root, Coram, or either of them, should hold any property coming into their hands by order of distribution of the probate court, upon the trust to satisfy the claim of the complainant?"

"5. To what extent, if any, is the jurisdiction of the circuit court limited or affected by the fact that the property from which payment is sought is in the hands of an administrator appointed by the Probate Court of Suffolk County?"

"6. Has the Probate Court of Suffolk County, as ancillary to its possession of the property, jurisdiction in equity to ascertain, declare, enforce, and foreclose a lien upon it?"