directors and commanding the other respondents to refrain from attempting to act as directors. All the individual petitioners and respondents are residents of this Commonwealth.

A demurrer to the bill upon several grounds, one of which was that the subject matter of the controversy concerns the internal management of the affairs of a foreign corporation, was sustained by a single justice of this court and the bill ordered to be dismissed; and the case is before us upon a report made by him, such disposition thereof to be made as law and justice may require.

It is plain that the demurrer must be sustained. The only thing in controversy is whether the petitioners have been elected directors in accordance with the law of the home of the corporation, a question relating simply to the official relations existing between them and the corporation. This is a question relating solely to the management of the internal affairs of the corporation. Although there is some difference in the various States as to whether jurisdiction shall be taken in such a case (see *North State Copper & Gold Mining Co.* v. *Field*, 64 Md. 151, and *State* v. *Cronan*, 23 Nev. 437), we are satisfied that the better rule is that such questions should be settled by the courts of the State in which the corporation is domiciled, and we must decline to take jurisdiction. See *Kimball* v. *St. Louis & San Francisco Railway*, 157 Mass. 7, and cases cited.

Petition dismissed.

THOMAS WHITE *vs.* APSLEY RUBBER COMPANY.

Middlesex. March 4, 1902. — May 20, 1902.

Present: HOLMES, C. J., KNOWLTON, MORTON, BARKER, & LORING, JJ.

Abuse of Legal Process.

An action will lie for maliciously procuring the arrest of the plaintiff on a criminal charge in order to compel him to abandon a claim of right of occupation of a certain house and actually to withdraw from its occupation, and it is no defence to such an action that the prosecution has not been terminated, although this would be a defence to an action for malicious prosecution.

TORT with two counts for malicious prosecution and two for abuse of criminal process. Writ dated April 4, 1898.

At the trial in the Superior Court before *Blodgett*, J., it appeared, that the plaintiff was in charge of a boarding house belonging to the president of the defendant and used for its employees, the furniture belonging to the defendant; that the defendant wished to remove the plaintiff and put in his place a family named Gray; and that the Grays took possession of the kitchen and proposed to make use of the cooking stove, whereupon the plaintiff took the stove covers and carried them to his own room, so that the stove could not be used. One Bailey, an agent of the defendant, procured a warrant for the plaintiff's arrest on the charge of wilfully and maliciously injuring personal property of the defendant, by the removal and concealment of the lids or covers of a certain cooking stove. The plaintiff was arrested by an officer who came with Bailey, and finally was released on agreeing to move out of the house. This he did, taking his family and belongings. On the order of the officer he brought back the stove covers, which were not injured. The warrant was never returned into court, and no further proceedings were had.

The judge ordered a verdict for the defendant; and the plaintiff alleged exceptions, which, after the resignation of *Blodgett*, J., were allowed by *Fessenden*, J.

C. F. Choate, Jr., for the plaintiff.

G. A. A. Pevey, (*J. T. Joslin* with him,) for the defendant.

BARKER, J. It is conceded that criminal proceedings were begun against the plaintiff by a sworn complaint made to a trial justice charging that the plaintiff had wilfully and maliciously injured the personal property of the defendant, and that a warrant for the plaintiff's arrest was issued upon the complaint and placed in the hands of a police officer who then went to the house where the plaintiff was. The evidence tended to show that the plaintiff was arrested upon this warrant at the house and kept under arrest for some minutes during which he went with the officer to the defendant's office and then returned with him to the house and that he was not released from the arrest until he had abandoned a claim to the right to occupy the house and had left it finally taking away with himself and

his wife such goods of his own as were in the house when he was arrested.

The evidence also tended to show that the defendant caused the making of the complaint and the arrest, and made use of the arrest to compel the plaintiff against his will to abandon a claim to the right to occupy the house and to compel him actually to withdraw from its occupation. The warrant has never been returned and since it was issued there has been no judicial action upon the complaint. The fact that the prosecution has not been terminated bars any recovery upon the counts for malicious prosecution. *Cardival* v. *Smith*, 109 Mass. 158. *Wood* v. *Graves*, 144 Mass. 365, 366. See *Wilson* v. *Hale*, 178 Mass. 111. But that fact is not a defence to the counts for abuse of process. *Wood* v. *Graves*, *ubi supra*. A misuse of the warrant and the arrest to compel him to quit the house and relinquish his claim to the right to its occupancy would give him a right of action.

Exceptions sustained.

FREDERIC F. HASKELL, trustee, *vs.* EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES.

Suffolk. March 5, 1902. — May 20, 1902.

Present: HOLMES, C. J., KNOWLTON, MORTON, BARKER, & LORING, JJ.

Pleading. Insurance, Life. Bankruptcy.

In an action by a trustee in bankruptcy to recover the cash surrender value of an insurance policy on the life of the bankrupt, the declaration must contain averments showing that the policy has a cash surrender value, and if issued in another State the laws of that State giving such a policy a cash surrender value must be stated as facts. An averment that "said policy was an asset, it having at the time a cash surrender value of $692.50," is bad on demurrer, being either a conclusion of law or a deduction of fact from primary facts not stated and necessary to set forth a cause of action.

If a bankrupt at the time of his bankruptcy holds a life insurance policy providing that, if he dies within twenty years, the company shall pay the amount of the policy to his mother if living or if she is dead to his estate, and at the end of twenty years, if he survives, the company shall pay it to him, he has a valuable interest in the policy which passes to his trustee; but the trustee cannot sur-