

PENNSYLVANIA R. Co. and others v. ALLEGHENY VALLEY R. Co. and others.

(Circuit Court, W. D. Pennsylvania. January 7, 1885.)

REMOVAL OF CAUSE—MOTION TO REMAND—COLLUSIVE JOINDER OF PARTIES.

It is good practice to raise *in limine*, by petition to remand, the question of the alleged collusive joinder of a party for the purpose of creating a case removable to the circuit court; and the right so to raise the question is not waived by reason of a prior unsuccessful motion to remand on jurisdictional grounds supposed to appear on the face of the record.

Sur Petition to Remand Suit, etc.

Wayne MacVeagh, for the motion.

George Shiras, Jr., and D. T. Watson, contra.

ACHESON, J. As the fifth section of the act of congress of March 3, 1875, makes it the duty of the circuit court to remand a suit removed thereto from a state court, if at any time it shall appear to the satisfaction of the circuit court that the parties to such suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case removable under the act, it seems to me to be good practice to raise the question of the alleged improper or collusive joinder of a party for such purpose *in limine*, by petition to remand, as has been done here. And there was no waiver of the right so to raise the question by reason of the prior motion to remand on jurisdictional grounds supposed to appear upon the face of the record.

The plaintiffs' petition charges that E. W. Ross was improperly and collusively made a defendant, for the purpose of creating a case removable into this court. If this be so, this court is concerned to know the fact as soon as possible, and the plaintiffs shall now have the fullest opportunity to establish the truth of their allegation by testimony taken in accordance with the rules and practice in equity causes.

Mr. Ross has filed an answer to said petition in denial thereof. That answer strikes me to be fairly responsive to the averments of the petition, and exceptions to it have not been filed. Hence, at present, I see no good reason for making the order I am asked to do requiring Mr. Ross to come from his home, in the state of New York, to Pittsburgh, and submit to an oral examination before the clerk of this court. Leave, however, is granted the plaintiffs (if they desire so to do) to supplement their said petition by interrogatories addressed to Mr. Ross, to be answered by him under oath.

McHENRY and others v. New York, P. & O. R. Co. and others.

(Circuit Court, W. D. Pennsylvania. August 13, 1885.)

REMOVAL OF CAUSE—RECEIVER—ORDER APPOINTING, RESCINDED.

An order was made in the state court upon an *ex parte* application appointing a receiver of a railroad company. After removal of the suit to the circuit court, upon a hearing of both sides, it not appearing that the property of the company was in jeopardy, or in need of the protecting control of the court, and the continuance of the receivership being likely to prove prejudicial to innocent holders of the securities of the company, held, that the order appointing the receiver should be rescinded.

In Equity. *Sur* motion to rescind the order appointing a receiver. *W. W. MacFarland, R. P. Ranney, Adams & Russell, and John J. Henderson,* for the motion.

J. B. Brawley, W. R. Bole, and C. Heydrick, contra.

Coram McKENNAN and ACHESON, JJ.

ACHESON, J. The order appointing a receiver was made by the learned judge of the court of common pleas upon an *ex parte* application, while we have had the benefit of a fuller hearing and a discussion by counsel representing both sides. It would, of course, be altogether premature at this preliminary stage of the case for us to consider the merits of the controversy or intimate any opinion thereon. We content ourselves with saying that the most material allegations of the bill are denied, and the right of the plaintiffs to any final relief is not yet satisfactorily established.

It is not shown to our satisfaction that the property of the defendant company is in any jeopardy, or needs the protecting control of the court. On the other hand, it is not difficult to see how the innocent holders of the securities of the company may be greatly embarrassed and prejudiced by the continuance of the receivership. Indeed, the effect of the order in question is to suspend the operation of the trust established by the agreement of all the parties in interest, and this, too, when the trustees are not before the court.

The office order that the bill be taken *pro confesso* as against the New York, Pennsylvania & Ohio Railroad Company, for want of an appearance, was entered by the prothonotary upon the baldest technical default, if, indeed, even that had occurred. A motion to vacate that order was immediately made, and, although not yet acted upon, it ought to be considered as allowed, in relief of innocent parties whose rights are here involved. We have no hesitation in holding that the order appointing a receiver should no longer remain in force. And now, August 13, 1885, upon consideration, it is ordered, adjudged, and decreed that the order made in this case on July 11, 1885, appointing a receiver, etc., be, and the same is, rescinded, and the receiver is discharged.