

CENTRAL TRUST Co. and another v. WABASH, ST. L. & P. RY. Co. and others.¹

(Circuit Court, E. D. Missouri. January 5, 1886.)

RECEIVERS—TAXES—REV. ST. MO. § 6754.

The fact that the property of a corporation is in the hands of a receiver of this court does not exempt it from seizure and sale by the collector of taxes, under section 6754 of the Revised Statutes of Missouri.

In Equity. Information against the county collector of Chariton county.

Wells H. Blodgett, for receivers.

BREWER, J., (*orally*.) An application was made to me yesterday to issue an attachment against the collector of taxes in one of the counties of this state, who had issued his warrant and levied on an engine belonging to the Wabash road, and now in the possession of the receivers. It is not represented in the petition that the taxes are not just and legal, or that they are not due. The statutes of Missouri make it the duty of the collector, if the taxes are not paid, to issue his warrant and seize property, and sell the same as upon execution. It is suggested that there is no danger of this property being placed beyond the jurisdiction of the county, and no doubt but that the taxes will be paid in a few days, and it is intimated that perhaps the collector is proceeding summarily in this way for the mere sake of obtaining the fees which the statute authorizes him to charge whenever he makes a levy. Be that as it may, I think that in levying and collecting taxes the state is exercising its sovereign power, and that there should be no interference with its collection of those taxes in its prescribed and regular methods, even by a court having property in the possession of its receivers, unless it is first charged that the taxes are in some way illegal or excessive. The mere fact that the receivers have no money on hand to pay the taxes is no excuse for stopping the process of the state for their collection. It may be hard for the road to pay these taxes, but it can be no harder for a corporation in the hands of receivers to pay taxes than it is for an individual, and the remedy of the state is in each case the same. The application for attachment will be denied.

¹Reported by Benj. F. Rex, Esq., of the St. Louis bar.

CENTRAL TRUST Co. and another v. WABASH, St. L. & P. Ry. Co. and others. (Yakey, Intervenor.)¹

(Circuit Court, E. D. Missouri. January 5, 1886.)

RAILROAD COMPANIES—FENCES—DOUBLE DAMAGES FOR KILLING CATTLE—RECEIVERS—REV. ST. MO. § 809.

The fact that a railroad is in the hands of receivers of this court does not make it any the less liable under section 809 of the Revised Statutes of Missouri for double damages for killing cattle.

In Equity. Petition for rehearing on the intervening petition.

The intervenor asks in his petition for double damages for the killing of two heifers by the Quincy, Missouri & Pacific Railroad, June 11, 1884, and alleges that the heifers were reasonably worth when killed \$550, and \$50, respectively. The double damages were claimed under section 809, Rev. St. Mo. The claim having been referred to a master, he reported that the intervenor was not entitled to double damages, and that the cattle were only worth \$200, and \$30, respectively. He recommended, therefore, that the following order be entered: "Ordered that the receiver herein pay to Peter H. Yakey out of the incoming rents and profits of the property in their charge, not otherwise appropriated by the previous orders of this court, the sum of \$230, with interest at the rate of six per cent. from the thirteenth day of June, 1885." The intervenor excepted to this report, and it was overruled by TREAT, J., as to double damages not being allowable, and in other respects confirmed. The matter now comes up on a motion by the receivers for a rehearing, asking that the master's report be confirmed in all things.

H. S. Priest, George S. Grover, and E. Smith, for receivers.

James Carr, for intervenor.

BREWER, J., (orally.) In this case the only question is whether the double damage act of the state of Missouri is to be enforced as against railroad property in the hands of a receiver. The supreme court of the United States have affirmed the validity of that act;² and I know of no reason why it is not applicable to every road in the state, whether in or out of the hands of a receiver. It is true there may be no equity, where the court takes possession of the assets of an insolvent corporation, in saying to one man, whose cow is killed, "We will double the value of your cow as a basis of adjustment," and to a man who has done a day's work, "We will adjust your claim only at the value of such work," and then distribute the assets upon that basis between them. But while there may be no equity in that mode of distribution, (and so I said in response to a letter written by some one who wanted to have me send all these cow cases to the state courts for trial,) yet when the question is put directly before the court

¹ Reported by Benj. F. Rex, Esq., of the St. Louis bar.

² Missouri Pac. Ry. Co. v. Humes, 6 Sup. Ct. Rep. 110.