

EELLS, Trustee, etc., v. JOHANN, Sheriff, etc.¹

(Circuit Court, E. D. Missouri. April 23, 1886.)

RAILROADS—MORTGAGES—ENFORCEMENT OF JUDGMENTS AGAINST MORTGAGED PROPERTY.

Where a railroad company whose property is mortgaged incurs obligations in the course of its operations, and judgment is recovered against it in a state court, that judgment may be enforced before forfeiture or foreclosure or the appointment of a receiver, by levying upon and selling a portion of the mortgaged property, and a federal court will not restrain its enforcement at the instance of the mortgage creditor.

In Equity. Bill for injunction.
William L. Anderson, for complainant.

TREAT, J., (*orally.*) In this case a bill has been filed on which an application for a provisional injunction is desired. It is an application without notice to the respondent, whereby, prior to a date to be named for the hearing of such a motion, the application should be granted intermediately. The bill discloses that on the seventh of May, 1881, judgment was rendered in the state circuit court of St. Charles county, Missouri, against the railway corporation named, in the enforcement of which judgment levy has been made by the sheriff of said St. Charles county upon certain portions of the property of said railway corporation. The trustee of the bondholders asks this court to enjoin the sheriff from proceeding under the judgment and execution in his hands because the property named, which has been seized by said sheriff, is included within the terms of the prior mortgage.

(1) Is this a case where the court should grant an injunction to restrain a state court or its officers? (2) If so, is there anything on the face of the bill requiring the present interference of this court? (3) A larger question underlies this proceeding. A "going concern," to-wit, a railroad, in the course of its operations, though under mortgage, incurs obligations judicially determined to exist. When an attempt is made to enforce said obligations under the ordinary forms of law, shall the judgment creditor not have the right to enforce the same notwithstanding there is a prior outstanding mortgage which covers the property levied upon by the sheriff? So far as can be determined by the bill, the corporation was liable for the judgment had, and the property of the corporation was subject thereto. Is it possible that a judgment creditor who wishes to enforce his judgment against the corporate property shall be restrained from so doing until, without the intermediate appointment of a receiver, the mortgagee forecloses? Of course, a sale by the sheriff under the judgment of the state court will be subject to prior rights; but there is no reason why he should not proceed to sell. It cannot

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

be that because a railroad is bonded that the corporation shall escape liability for its current obligations. While it is a going concern it is operated for the benefit of the bondholders as well as all other parties in interest, and the current obligations thus incurred are to be enforced against the property. The theory of the bill seems to be that none of the obligations, even though judicially determined against the corporation, are enforceable against the property of the corporation because there is an outstanding mortgage which covers such property. This court assents to no such doctrine. Until the mortgage is foreclosed, or proceedings had therefor, the obligations of the corporation, in connection with its operations, are to be enforced prior in right to the unmatured demands of the mortgagee. It therefore appears on the face of the bill that this court should not interfere with the enforcement of the judgment of the state circuit court, and that the due conduct of affairs by said court should not, under the facts stated, be interfered with by this tribunal.

The application is denied, with leave to withdraw the bill.

HOUGH *v.* BUCHANAN.

(*Circuit Court, N. D. Iowa, C. D. January, 1886.*)

PUBLIC LANDS—RAILROAD LAND GRANTS—SWAMP-LAND ACT—LACHES.

Where, under the act of congress, approved May 15, 1856, granting certain lands to the state of Iowa to aid in the construction of railroads, the lands were selected and claimed as indemnity lands by the state, and the United States had conveyed the title to the railroad company, which became a purchaser for value, such action on the part of the state defeats its right to subsequently claim the same lands under the swamp-land act of 1850; especially where no patent had been issued to the state under the swamp-land act, and where those claiming under said act had, during 25 years, done nothing to perfect the evidence of their title, or to assert any right to the land.

Equity. Bill to quiet title to certain realty.

R. S. Ervin and Theo. Hawley, for complainants.

A. F. Call and Geo. E. Clarke, for defendant.

SHIRAS, J. The bill in this cause is filed for the purpose of quieting in complainants the title to the N. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$, and the N. W. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$, and the N. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$, of section 11, township 91, range 31 west, situated in Pocahontas county, Iowa. The complainants, who are the widow and heirs at law of John Hough, deceased, claim title under the act of congress approved May 15, 1856, granting certain lands to the state of Iowa to aid in the construction of several lines of railway proposed to be built in said state. The defendant claims the land under the act of congress approved September 28, 1850, and commonly known as the "Swamp-land Act."