

GARRETT *et al.* v. NEW YORK TRANSIT & TERMINAL CO., Limited, *et al.*

(Circuit Court, S. D. New York. October 27, 1888.)

## INJUNCTION—COURTS—CONFLICTING STATE AND FEDERAL JURISDICTION.

Where the state court enters a decree before an order in the United States circuit court to show cause why a temporary injunction should not issue is heard, making the acts sought to be enjoined a contempt of the state court if done, and rendering the process of the United States court merely ancillary, the injunction will be denied, and complainants left to their remedy in the state court.

In Equity. On motion to show cause.

Bill by Robert Garrett and others against the New York Transit & Terminal Company, Limited, and others.

*Wm. W. Macfarland*, for complainants.

*Francis L. Stetson*, for defendants.

LACOMBE, J. Complainants sued defendants in the supreme court of the state. Upon trial, at special term, the relief asked for in the complaint was granted as to some of the defendants, but was refused, and the action dismissed, as to others. Thereupon complainants brought suit in this court against the defendants who had prevailed in the state court, praying for the same relief. Upon beginning this suit, complainants obtained an order to show cause why a temporary injunction should not issue, forbidding the defendants from making any disposition of the property in controversy, or from incumbering the same in any way. This order to show cause was returnable on June 7, 1886, and until the return-day of the order defendants were by its last clause restrained from doing the acts sought to be enjoined. The return-day of the order to show cause has been adjourned by consent, from time to time, until now. Meanwhile an appeal was prosecuted in the state court, the decision of the special term reversed, and judgment for the relief prayed for entered against all the defendants. This judgment has been affirmed by the court of appeals.<sup>1</sup> Defendants, who have not obeyed the mandate of the state court, are now, it is alleged, in contempt of that tribunal, and motion to punish them for such contempt has been made. Upon the argument of this motion for a preliminary injunction, counsel for the complainant conceded that there was no act which, being committed by the defendants, would be a contempt of the temporary injunction now asked for, that would not also be a contempt of the decree of the state court. It is also practically conceded that the process of this court is sought only as ancillary to that of the state court, and that complainants have no expectation of prosecuting the case here to final hearing, and thereupon obtaining the permanent injunction prayed for. Under these circumstances, the complainants should be left to their remedy in the state courts; and their motion for a temporary injunction must be denied.

<sup>1</sup>Not reported.

PICKETT'S HEIRS *v.* FOSTER *et al.*

(Circuit Court, W. D. Louisiana. February, 1888.)

1. MORTGAGES—DEEDS OF TRUST—EXECUTED OUT OF STATE.

A deed of trust, executed in another state, on property in Louisiana, to secure the payment of promissory notes, will be enforced as a conventional mortgage.

2. SAME—LIEN—TACIT MORTGAGE—GUARDIAN AND WARD.

Several years after the minors R. & B. were emancipated by marriage, and while they were in the enjoyment and control of their estates, their former tutor filed and caused to be homologated his final account against them. In the judgment the clerk recognized a tacit mortgage in favor of the tutor on his wards' property, dating from the beginning of the tutorship, which was never registered. *Held* that, whatever may be the legal effect of such a mortgage as between the tutor and his former wards, his tacit mortgage is inferior to the mortgage which they had contracted after their marriage, and while in full control of their property, with complainants.

3. SAME—LIEN—RECORDING.

The deed of trust in this case was originally registered in 1866. Not being reinscribed within 10 years thereafter, it was, as to third persons, extinguished, when, in 1885, it was again registered. This case discloses no facts which should forbid the application of the registry laws of Louisiana.

4. EXECUTORS AND ADMINISTRATORS—PUBLIC ADMINISTRATOR—ACTIONS—DISMISSAL BY SUCCESSOR.

The public administrator, to whom no letters of administration are shown to have been granted by the court, instituted a suit in the interest of a succession. Afterwards he resigned, and one of the defendants in the suit, having been appointed his successor, caused the suit to be called out and dismissed for want of prosecution. *Held*, that the suit was instituted without authority by the public administrator, and his successor in office was not charged with any official duties in relation to it; that his having the suit called out and dismissed, or his failure to prosecute it, does not make him in any capacity liable to the heirs of the succession.

(*Syllabus by the Court.*)

In Equity

*J. T. Ludeling* and *W. G. Wyly*, for complainants.

*C. I. & I. S. Boatner* and *A. H. Leonard*, for defendants.

BOARMAN, J. Complainants sue to enforce the lien of a deed of trust executed at Memphis, Tenn., to J. C. Pickett, on the Jonathan Morgan plantation in Carroll parish, to secure the payment of three promissory notes, amounting to \$18,000, with 6 per cent. interest, drawn by Mrs. Agnes Ricketts, and Bell; to have certain acts, sales, transactions, and mortgages, which were made from time to time by the defendants *inter sese*, declared without effect as to the plaintiffs; and for judgment *in personam*, against George Foster, formerly the public administrator of said parish, because of his failure to discharge certain official trusts imposed on him by law, as the public administrator of Carroll parish, for such a sum as will repair the damages caused by his unfaithfulness. The bill shows that the last of the notes became due January, 1869, and that the deed of trust executed to secure their payment was registered in Carroll parish January, 1866, and reinscribed in 1885; that J. C. Pickett died in Kentucky, and B. H. Lanier, as the public admin-