

states of the Union. *Hyde v. Stone*, 20 How. 175; *Union Bank v. Jolly's Adm'rs*, 18 How. 503; *Suydam v. Broadnax*, 14 Pet. 67." See, also, *Fiske v. Hills*, 11 Biss. 294; S. C. 12 FED. REP. 372; *Cornett v. Williams*, 20 Wall. 249.

This bill shows that the complainant is a citizen and resident of Illinois, and the respondent of Indiana, and, except in the respect already considered, its sufficiency has not been questioned. The demurrer is therefore overruled.

CARTER v. CITY OF NEW ORLEANS.¹

(Circuit Court, E. D. Louisiana. February, 1884.)

1. INTERVENTIONS IN EQUITY CASES.

Third persons may be permitted to intervene for their rights in equity cases, if those rights are to be affected, and if at the hearing the court would be compelled to notice their absence, and order the case to stand over until they were brought in, or their rights were protected. 1 Daniell, Ch. 287, note 2; Story, Eq. Pl. § 220.

2. INJUNCTION—TRUST FUND.

A creditor of a trust fund is not entitled to an absolute injunction restraining the trustee from paying over any part of the fund, absolutely, but only from making any payment until the complaining creditor is paid.

On Motion of Intervenors to Quash Injunction, and on motion of complainant to strike out the interventions.

Thomas J. Semmes, J. C. Payne, and Charles Carroll, for complainant.

Joseph P. Hornor and Francis W. Baker, for intervenors.

Charles F. Buck, City Atty., for defendant.

PARDEE, J. This is a suit by a creditor to secure payment from an alleged trust fund, in preference to other creditors, over whom priority is claimed. The fund is not enough to pay all the claims. The intervenors are some of the other creditors, over whom priority is claimed. If their rights are to be affected they are necessary parties. At the hearing, if their rights would be lost by a decree, the court would be compelled to notice their absence, and order the case to stand over until they were brought in, or their rights were protected. 1 Daniell, Ch. 287, note 2; Story, Eq. Pl. § 220. As they are here of their own motion, and as no decree can be rendered without them, and as the court can compel the complainant to bring them in, I see no impropriety in permitting the interventions to remain. The motion to strike off the interventions is therefore denied.

The injunction *pendente* is warranted by the allegations of the bill, but it apparently goes further than is necessary to protect complain-

¹ Reported by Joseph P. Hornor, Esq., of the New Orleans bar.

ant's rights. If he is paid in full, his interest ceases, and he cannot complain. The injunction will, therefore, be modified so as only to restrain the defendants from paying other claims out of the fund in question until the complainant is paid the amount of his demands, and this modification will be effected by inserting in the injunction, as set forth in the transcript, page 36, in the tenth line from the bottom, after the word "until," and before the word "ordinances," the words "the demands of the complainant arising under."

Solicitor for defendant will see that the proper order is taken.

WESTERN UNION TEL. CO. v. BALTIMORE & O. TEL. CO. and others.

(Circuit Court S. D. New York. March 23, 1884.)

RAILROAD IS A POST-ROAD, AND AS SUCH AMENABLE TO ACT OF CONGRESS, JULY 24, 1866.

A railroad is, under the statutes of the United States, a post-road, and accordingly the act of congress of July 24, 1866, giving to all telegraph companies alike the right to construct, maintain, and operate lines along all post-roads of the United States, is paramount over any agreement made by a railroad company securing to a telegraph company the sole use of its line of road for its wires.

In Equity.

Wager Swayne and Burton N. Harrison, for Western Union Tel. Co.
Dorsheimer, Bacon & Steele, for Baltimore & O. Tel. Co. and Nat. Tel. Co.

P. B. McLennan, for N. Y., W. S. & B. Ry.

WALLACE, J. The complainant moves for a preliminary injunction to restrain the two telegraph companies defendants from erecting and operating the telegraph line upon the land of the defendant railway company, and to enjoin the railway company from permitting either of the defendant telegraph companies to use its right of way for such purpose, and from violating any of the provisions of an agreement entered into between the complainants and the Jersey City & Albany Railway Company on the seventh day of January, 1880.

The facts are these: On the seventh day of January, 1880, the complainant entered into a written agreement with the Jersey City & Albany Railway Company, which, among other things, contained the following clause:

"The railway company, so far as it legally may, hereby grants and agrees to assure to the telegraph company an exclusive right of way on and along the line and lands of the railway company, and on any extension or branches thereof, for the construction and use of lines of poles and wires for commercial or public uses or business, with the right to put up from time to time such additional wires, or lines of poles and wires, as the telegraph company may deem expedient; and the said railway further agrees * * * that it