

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APPOINTING, RESCINDED.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to innocent holders of the securities of the company, *held*, that the order appointing the receiver should be rescinded.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.

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