

is rendered against it and the partners individually. This is the established practice in Louisiana. In rendering judgments in this court in suits where the partnership is joined as a defendant with the real obligors, we see no objection to following the usual form established and followed in the state practice. The effect of this is precisely what is produced by a judgment against the members of a partnership in the common-law states; it characterizes the judgment as being rendered upon a partnership obligation, and affects the partnership property as well as the individual property of the partners. Certainly the naming of the partnership as a defendant, even if such partnership is not a distinct party defendant capable of standing in judgment, cannot defeat the jurisdiction of the court which exists over the other defendants. The question in this case is therefore reduced to the single inquiry whether Solomon Meyer is a necessary party to the maintenance of this suit. This precise question, we understand, is decided in the negative by the supreme court in *Breedlove v. Nicolet*, 7 Pet. 413, where it was held that, on an obligation of a commercial partnership domiciled in Louisiana, two partners residing in Louisiana might be sued without joining the third partner, not residing in said state. See, also, Rev. St. U. S. § 737. The facts as set forth in the exception on file we find to be true as pleaded, but for the reasons aforesaid we are of opinion that the exception should be overruled, and it is so ordered.

---

FINANCE CO. OF PENNSYLVANIA *et al.* v. CHARLESTON, C. & C. R. Co.

(Circuit Court, D. South Carolina. February 25, 1891.)

RECEIVER—APPOINTMENT.

In proceedings for the appointment of a receiver of an insolvent railroad company, one who is a party to or counsel in the cause, or who has been an officer of the company, will not be made the permanent receiver.

In Equity.

*Samuel Lord* and *J. N. Nathans*, for complainants.

*Newman Erb, Mitchell & Smith, Smythe & Lee*, and *G. W. McCormack*, for defendants.

**BOND, J.** This is a motion for the appointment of a permanent receiver for the defendant railroad company. At the outset, upon the filing of the bill, it was absolutely necessary, in the interest of the creditors and mortgagees of the defendant company, to appoint a receiver immediately. The railroad extended over three states, and passed through several counties in each, where courts were in existence, having jurisdiction to adjudicate claims arising within their territorial limits. Manifestly, it was of the utmost importance that the control of the line should be in one place and under one jurisdiction. Endless confusion would

otherwise have arisen. Questions of priority of liens, and of the rights of different parties, could be thus uniformly determined, and while the sale of the road as an entirety, if the result of the litigation should result in a sale, might produce a fund for distribution among creditors, the sale of so much of it as the courts of the state had within their respective jurisdictions would result in failure. The appointment of the temporary receiver was made at the suggestion of complainants, whose counsel he was, because he was a person well known to the court as a lawyer of great ability and of unquestioned integrity, and his conduct of affairs since his appointment has justified in the highest degree the confidence of both the complainants and the court. But it has been the uniform practice in this circuit to appoint no one receiver of a railroad corporation who has been one of its officers, or who had anything to do with its control prior to its insolvency. It has always been thought that while the insolvency of the company might have been caused by misfortune, and by no default of its direction, nevertheless those who were about to lose their property, or had it placed in jeopardy, were entitled, in all reason and fairness, to a new management, though perhaps not a better one. In the one case, there is some hope; in the other, there can be expected but the former result. Now, where we have the names of three persons suggested to us by parties in interest, for appointment as permanent receiver, we think, while we have the highest respect for Mr. Dickinson, he ought not to be made permanent receiver, because he was a director in the road, and is a party to the suit. And though, if it were left to us to do as our inclinations lead us, we would continue Mr. Lord as receiver, we think that, as he is counsel for the complainants, and can see, from what is already disclosed in the cause, that there are bitter conflicting interests, all parties will have a sense of fairness in the conduct of the receivership if a person entirely disinterested be appointed. We are sure this will be seen at once by Mr. Lord, who was recommended to the court by all the complainants, some of whom now object to his appointment as permanent receiver. From the report filed by the temporary receiver it is apparent that the railroad is in a most wretched condition. It appears that it is positively dangerous to run it. To put it in anything like the condition it ought to be to transport passengers safely will cost more than \$100,000. The receiver has no funds for that purpose, even if it was the duty of the court to repair mortgaged railroads; he is not likely to have, for the running expenses exceed largely the receipts. One justification a court has in holding possession of a railroad without a sale, after the case is matured, is the hope that the unsecured creditors may possibly get some return for their labor or property. Here there is no cheerful ray of hope. The receivership must be a short one. There must be a speedy sale, and those who are secured by the mortgage, which these proceedings seek to foreclose, must take their security after payment of prior liens, if there be any such, and do the best they can with it. Under these circumstances, we have thought it best to select the third person named to us as receiver, Mr. D. H. Chamberlain, now the receiver of the South

Carolina road, with which the Charleston, Cincinnati & Chicago Railroad connects, and an order will be passed accordingly. Unless in cases of imperative necessity, no person will be appointed receiver of a railroad company who is a party to or of counsel in the cause, or who has been an officer in, or an official of, the insolvent corporation.

SIMONTON, J., concurs.

---

CAREY *et al.* v. HOUSTON & T. C. RY. CO. *et al.*

(Circuit Court, E. D. Texas. March, 1891.)

1. RAILROAD COMPANIES—INSOLVENCY—RIGHTS OF STOCKHOLDERS.

An insolvent railroad company had issued several series of mortgage bonds, some of which mortgages covered all of its property, and others only part. The principal of some of the mortgages was due, and the company had defaulted on the interest on all of them. In addition, it had a large floating debt, running into millions. There was no fair possibility of its being able to pay the accrued interest on the bonds and the floating debt without a sale of all its properties. *Held*, that a decree foreclosing all the mortgages, entered by consent of the creditors, would not be set aside at the suit of some of the stockholders on the ground that the principal of some of the mortgages was not yet due, as it was to the interest of the railroad company that the rights of all the mortgage bondholders should be cut off to enable the company to effect a reorganization which would secure and extend its bonded debt, and reduce the rate of interest thereon, and provide the necessary means to satisfy the floating debt.

2. SAME—REORGANIZATION—INJUNCTION.

A proposed reorganization of the company, to be effected in connection with the foreclosure sale, by which the bonded indebtedness is refunded on longer time and at reduced interest, and which allows each stockholder to retain his stock on the payment of his *pro rata* share of the floating debt, is not a fraud on the stockholders, and will not be enjoined at the suit of some of them, who do not suggest any other method by which the financial embarrassments of the company can be met.

In Equity.

Bill by S. W. Carey and others against the Houston & Texas Central Railway and others. Complainant alleged that they were stockholders in defendant railroad company, and that the latter had issued several series of bonds, secured by distinct mortgages on its property. Some of these mortgages covered all its property, and some only part. Most of the bonds were owned by the Farmers' Loan & Trust Company and by the Southern Development Company, in which C. P. Huntington was a large stockholder, and by the Southern Pacific Railroad Company, of which Huntington is vice-president. The bill further alleged:

"(5) That in none of the said several mortgages is it provided that the failure to pay interest upon any of the bonds shall be taken to precipitate the maturity of the principal, nor do they provide for or permit the sale of the said railway prior to the maturity of the principal of the bonds referred to in the said respective mortgages, or either of them.

"(6) That the main line first mortgage, upon which said bill No. 198 was founded and based, provided by its terms that, if default be made in the payment of interest which should become due upon the said bonds, the trustees, at the request of any bondholder, were required to make a demand in writing