PATTEN v. CILLEY. (No. 1.)

(Circuit Court of Appeals, First Circuit. April 22, 1892.)

1. WRIT OF ERROR—DISMISSAL—FINAL JUDGMENT—REFUSAL TO REMAND.
The denial of a motion to remand a cause to the state court is not a final judgment or order, and the circuit court of appeals has no jurisdiction in error in such stage of the case.
2. SAME—COSTS.
On the dismissal of a writ of error, defendant in error is entitled to judgment for the costs arising on the motion to dismiss. *Bradstreet Co.* v. *Higgins*, 5 Sup. Ct. Rep. 880, 114 U. S. 262, followed.

Error to the Circuit Court of the United States for the District of New Hampshire.

On petition of William A. Patten, the will of one Matilda P. Jenness was admitted to probate in solemn form by the probate court of Merrimack county, N. H. Horatio G. Cilley, one of the heirs at law of the testator, took an appeal to the supreme court of the state; and he afterwards procured the removal of the cause to the circuit court of the United States on the ground that he was a citizen of Iowa, while plaintiff, Patten, was a citizen of New Hampshire. Patten's motion to remand the cause to the state court was refused, and he brings error. Writ dismissed.

For former report, see 46 Fed. Rep. 892.

Harry Bingham, *John M. Mitchell*, and *Frank S. Streeter*, for plaintiff in error.

William L. Foster, *Harvey D. Hadlock*, and *Daniel Barnard*, for defendant in error.

Before PUTNAM, Circuit Judge, and NELSON and WEBB, District Judges.

WEBB, District Judge. We think that there has been no final decision in the circuit court, and that this court has no jurisdiction in error in the present stage of the case. Under the decision of the supreme court in *Bradstreet Co.* v. *Higgins*, 114 U. S. 262, 5 Sup. Ct. Rep. 880, the defendant in error is entitled to a judgment for the costs arising on the motion to dismiss. It is accordingly ordered that the writ of error be dismissed, with costs for the defendant incident to the motion to dismiss, including any costs incurred by him in printing the record, and that a mandate issue forthwith.

CLARKE *v.* CENTRAL RAILROAD & BANKING CO. OF GEORGIA *et al.*

CENTRAL TRUST CO. OF NEW YORK *v.* COMER *et al.*

(Circuit Court, S. D. Georgia, E. D. May 14, 1892.)

1. RAILWAY COMPANIES—ILLEGAL CONSOLIDATIONS—TRANSFER OF STOCK—RIGHT TO VOTE.
   The Ga. Co. of North Carolina acquired by purchase a majority of the stock of the Cent. R. Co. of Georgia, which it afterwards deposited with the Cent. Trust Co. of New York, and finally transferred to the Terminal Co., a system composed of several competitive lines of railroad. This company created a directory of the Cent. R. Co. to suit its purposes, which directory leased the Cent. R. R. to the R. & D. R. Co., a competing line. The lease was enjoined as contrary to Const. Ga. 1877, art. 4, § 2, par. 4, prohibiting the merger of competing corporations. The injunction order directed the election of a new board of directors for the Cent. R. Co., and provided that the stock of the company controlled by the Terminal Co. should not be voted in such election unless transferred in good faith. The stock in question consisted of 42,000 shares, 40,000 of which were those deposited by the Ga. Co. with the C. Trust Co. and transferred to the Terminal Co., and the remainder, 2,200 shares, acquired by the Terminal Co. from other sources. The Terminal Co. and the Ga. Co. filed a paper relinquishing to the Cent. Trust Co. any right they might have to vote such stock. *Held*, no interest in the stock appearing in the Cent. Trust Co., other than that of a mere stakeholder, that the relinquishment in question did not entitle it to vote.
2. SAME—INCAPACITATING TRUST.
   The Cent. Trust Co. was also incapacitated to vote such stock by the fact that it was trustee for a large amount of indebtedness of the Cent. R. Co., and, besides, its charter apparently gives no such power.
3. SAME.
   The Cent. Trust Co. was unfit to be intrusted with the voting power in question because of the fact that its president, a financial expert, was engaged in an attempt to bring about a merger of the Cent. R. Co. with competing lines of railroad in the state of Georgia, and place them under the sole control of the Terminal Co., contrary to the constitution of the state.
4. SAME—COMITY BETWEEN THE STATES.
   Comity between the states will not authorize a foreign railroad corporation to exercise powers within the state which a domestic corporation would not be permitted to exercise under the constitution and policy of the state.
5. SAME—COMPETING CORPORATIONS—ACQUISITION OF STOCK.
   The fact that the charter of the Cent. R. Co., granted before the adoption of the constitution of 1877, permitted municipal corporations to purchase its stock, would not authorize a competing corporation to acquire such stock after the adoption of the constitution.
6. SAME—DISQUALIFYING INTERESTS.
   The fact that the Terminal Co. has no appreciable interest in the stock of the Cent. R. Co., because of a mortgage on the railroad executed by the Terminal Co., does not remove the objection to its voting in person or by representative in the election of the directors of that railroad company, in view of the fact that it has large pecuniary interests in two directly competing lines of railroad.

In Equity. Bill by Rowena M. Clarke against the Central Railroad & Banking Company of Georgia and others, and bill by the Central Trust Company of New York against H. M. Comer, receiver, and others. Motion by the Central Trust Company to modify an interlocutory decree. Motion denied.

Butler, Stillman & Hubbard and *H. B. Tompkins*, for the motion.

Lawton & Cunningham, Denmark, Adams & Adams, Daniel W. Rountree, Marion Erwin, and *A. O. Bacon*, opposed.

SPEER, District Judge. It is essential to a clear understanding of the questions involved in this motion that a brief statement be made of the