FOOTE *et al.* v. GLENN.

(Circuit Court, D. New Jersey. September 27, 1892.)

INJUNCTION—RESTRAINING ENFORCEMENT OF JUDGMENT—FEDERAL AND STATE COURTS.

Decrees of state courts, having jurisdiction, in a suit against a corporation, brought by a creditor on behalf of himself and others, established the validity and declared the legal effect of a deed of trust made by the corporation for benefit of creditors, ascertained the debts owing by it, and made calls on unpaid subscriptions to its capital stock, upon which the trustee appointed to execute the deed of trust recovered judgment against a stockholder in a United States circuit court in another state. *Held*, that that court would not restrain the enforcement of such judgment upon charges of fraud and collusion in the allowance of claims by the decrees of the state courts, neither the corporation nor the creditors whose claims were impugned being parties to the suit for injunction, and there being other creditors having just claims for the payment of which there were no assets except the unpaid subscriptions; as, even if more than the complainant's just proportion of such valid claims should be collected by execution, the excess would be refunded.

In Equity. Motion for preliminary injunction. Denied.

Suit by John T. Foote, Catharine J. Cooper, and Robert D. Foote against John Glenn, trustee of the National Express & Transportation Company, to restrain the enforcement of a judgment recovered by defendant against the complainant John T. Foote. See 36 Fed. Rep. 824. The complainants joining with Foote in the bill were the sureties upon the bond given by him upon allowance of a writ of error to review said judgment. Complainants moved on their bill and affidavits for a preliminary injunction.

Alfred Mills and *George Zabriskie*, for complainants.

Charles Marshall and *Charles Biddle*, for defendant.

Before ACHESON, Circuit Judge, and GREEN, District Judge.

ACHESON, Circuit Judge. That the chancery court of the city of Richmond, Va., in the suit brought by William W. Glenn, suing on behalf of himself and other creditors, against the National Express & Transportation Company, a corporation of Virginia, and others, had jurisdiction to make its decree of December 14, 1880, establishing the validity of the deed of trust for the benefit of creditors, executed by the said corporation, and declaring its legal effect, removing the surviving trustees thereunder, and appointing a new trustee (John Glenn) in their place, ascertaining the debts owing by the corporation, and making an assessment and call upon the subscribers to its capital stock for a partial payment of their unpaid subscriptions, for the purpose of satisfying the debts of the corporation, and that the circuit court of Henrico county, Va., to which the cause was removed, had jurisdiction to make its decree in chancery of March 26, 1886, for an additional assessment and call upon said subscribers, are propositions no longer debatable, in view of the decisions of the supreme court of appeals of Virginia in *Lewis' Adm'r* v. *Glenn*, 84 Va. 947, 6 S. E. Rep. 866, and *Hamilton* v. *Glenn*, 85 Va. 901, 9 S. E. Rep. 129, and the decisions of the supreme court of the United States in *Hawkins* v. *Glenn*, 131 U. S. 319, 9 Sup. Ct. Rep. 739; *Glenn* v. *Liggett*, 135 U. S. 533, 10 Sup. Ct. Rep. 867; and *Glenn*

v. *Marbury*, 145 U. S. 499, 506, 12 Sup. Ct. Rep. 914. It is indeed true that the bill now before us to restrain the trustee, John Glenn, from enforcing his judgment obtained on the law side of this court against the complainant Foote, one of the subscribers to the capital stock of said corporation, proceeds upon the ground that the Virginia decrees were procured by fraud. The fraud, however, specifically charged by the bill and set forth in the *ex parte* affidavits filed in support of the present motion is that certain claims were allowed by the decree of December 14, 1880, which were open to valid defenses, and that other specified claims were thereby allowed which were unfounded and fraudulent, and that the court was kept in ignorance of the facts by the fraud and collusion of parties to the cause. But, if this be so, how can this court properly interfere? By what rightful authority can we undertake to pass upon the merits of individual claims sanctioned by the Richmond court? Neither the corporation nor the creditors whose claims are here impugned are before us, or within the reach of the process of this court. Furthermore, the fraud now complained of, if proved, would not invalidate the whole proceedings in the Virginia courts. It is not denied that there are creditors of the corporation who have just claims which should be paid. Now, those creditors are not responsible for the fraud alleged, and they ought not to be prejudiced thereby. There are no assets for the payment of unquestioned and unimpeachable claims except the unpaid stock subscriptions. The trustee appointed by the Virginia court of chancery, acting under the above-recited decrees, is proceeding to collect the stock assessments for the payment of the debts of the corporation. The distribution of the fund so to be raised is exclusively a matter for the Virginia chancery court. Indeed, that court is dealing with a trust over which it has acquired rightful jurisdiction. The complainants, therefore, in seeking redress here, are in the wrong forum. Their application for relief against the consequences of the alleged fraud should be addressed to the Virginia court. The case, we think, falls directly within the principle of the decision in *Graham* v. *Railroad Co.*, 118 U. S. 162, 6 Sup. Ct. Rep. 1009. We must assume that the Virginia chancery court is freely open to the complainants, and it is not to be doubted that upon proper complaint that tribunal will investigate the facts, and grant appropriate relief if fraud should be shown. In the mean time the worst that can befall the complainants is that a greater sum may be collected by execution at law than Foote's just proportion of the valid claims against the corporation as they may be established ultimately. But, if this should prove to be the case, the excess will be refunded; and, assuredly, the possibility that he may now be compelled to pay more than may be needed in the end affords no equitable ground for restraining execution upon the judgment which the trustee has recovered against him upon the assessments and calls made by the chancery court. *Kennedy* v. *Gibson*, 8 Wall. 498, 505. We must deny the motion for a preliminary injunction, and dissolve the restraining order heretofore made.

GREEN, District Judge, concurs.

COE *v.* EAST & W. R. CO. OF ALABAMA *et al.*

GRANT *et al. v.* SAME, (SCHLEY, Intervener.)

(Circuit Court, N. D. Alabama, S. D. January 12, 1892.)

1. CORPORATIONS—ISSUE OF STOCK FOR CONSTRUCTION OF RAILROAD—CONSTITUTIONAL RESTRICTION.
   Certain stockholders and directors of a railroad company, who owned a controlling interest therein, having the best interests of the company in view, and with the concurrence of all the other stockholders, negotiated a contract on its behalf with a construction company for the building of a portion of the road for $10,000 per mile in the bonds, and $10,000 per mile in the stock, of the railroad company. *Held*, that as the contract appeared to be fair, under the circumstances, and involved no fraudulent overvaluation of the work, the bonds and stock issued in accordance with its terms were not void, under Const. Ala. art. 14, § 6, providing that "no corporation shall issue stock except for money, labor done, or money or property actually received, and all fictitious increase of stock or indebtedness shall be void."
2. SAME—CONTRACTS BETWEEN COMPANIES HAVING SAME DIRECTORS—RATIFICATION—ISSUE OF BONDS.
   The same persons, being also the stockholders and directors of an iron company, negotiated in good faith a contract between the railroad company and the iron company, which took the form of a resolution by the railroad company to lease a railroad owned by the iron company, and pay in stocks and bonds, and of a subscription by the iron company to be paid in property, viz., a lease of their railroad; and the contract was ratified by a unanimous vote of all the stockholders of the railroad company. *Held*, that the contract was, at worst, only voidable, and as no fraud or intentional overvaluation appeared, and the consideration was as nearly adequate as could be expected under the circumstances, the bonds issued in accordance therewith were valid.
3. SAME—ISSUE OF BONDS—PURCHASE BY CONTROLLING DIRECTORS AT DISCOUNT.
   Subsequently, the same persons, retaining control of the railroad company, forebore to collect interest on its first mortgage bonds held by them, and advanced to it money for repairs made necessary by an unusual flood, and for improvements, until such floating debt amounted to upwards of $300,000. For the purpose of paying this, a meeting of stockholders authorized the issue of debenture bonds of the railroad company, not exceeding $500,000, to be secured by a second mortgage. The directors had previously resolved that such bonds, when issued, should not be disposed of at less than 65 per cent. *Held*, that the purchase by such persons, holding the entire floating debt, of the whole amount of bonds authorized, paid for in such indebtedness, and the balance in cash, was valid.
4. SAME—RIGHTS OF BONDHOLDERS—IMPEACHING PRIOR INDEBTEDNESS.
   Thereafter, in accordance with resolutions of the stockholders in the railroad company, which were assented to by all the stockholders, and which authorized the issuance of consolidated first mortgage bonds, in order to extend and improve the road, to take up and retire the first mortgage bonds and debenture bonds, and to cancel the first and debenture mortgages, the railroad company issued to the same persons consolidated first mortgage bonds, and took up at an agreed rate the debenture bonds purchased by them, the first mortgage bonds and stock issued to them and to the iron company, and the first mortgage bonds and stock issued to the construction company, and subsequently sold to them by that company to enable it to complete the road. *Held*, in an action to foreclose such consolidated first mortgage, that subsequent purchasers from them of such consolidated first mortgage bonds were chargeable with notice of the prior bonds and mortgages, and of the terms on which such consolidated bonds were issued, and that, the railroad company acquiescing in the transaction, and no intention to defraud subsequent creditors being shown, such subsequent purchasers could not impeach the prior indebtedness on which such bonds were issued, in order to invalidate the balance of the bonds.
5. EQUITY—RELIEF FROM FRAUD—RELIANCE ON FALSE REPRESENTATIONS.
   Holders of first mortgage bonds of a railroad, having contracted with brokers to sell them all their bonds, transferred to the brokers a portion of the bonds, and together with the brokers fraudulently procured the listing of the bonds in the New York Stock Exchange. *Held*, that persons who loaned money to the brokers on such bonds as security, relying either on the standing and representations of the brokers, or on quotations made in the New York Stock Exchange, and produced by fictitious manipulations of the brokers, and not on the false representations made by the