

maintained an action for its share of the local passenger receipts is ultra vires and invalid.

The first 10 exceptions will be overruled.

The eleventh exception relates to the revenues received by the complainant and respondent, respectively, between points intermediate to Newark and Columbus. These are included in the master's account. As stated therein, the amount of such revenues received by complainant, and included in the account and report, is \$604.75, and the amount received by respondent, and included in the report, is \$647.49. This exception will be sustained. The contract relates to the local freight business "from and to Newark and Columbus, with stations on the line of said road between those points." This does not include the carriage of freight from one intermediate station to another such station. If counsel cannot agree upon the amounts, the report will be recommitted to the master, with instructions to make the corrections. In all other respects the report is confirmed.

Ex parte CHAMBERLAIN.

(Circuit Court, D. South Carolina. February 16, 1893.)

1. FEDERAL COURTS — JURISDICTION — ILLEGAL TAXATION — INJUNCTION — RECEIVER.

A federal court has power to enjoin a sheriff from distraining property in the hands of its receiver to enforce the payment of a tax which is alleged to be illegal, especially when the property seized many times exceeds in value the amount of the tax.

2. SAME—INJUNCTION—WHEN GRANTED.

The mere fact that, under the South Carolina statute (Gen. St. § 230) authorizing sheriffs to distrain for nonpayment of taxes "sufficient personal property of the party charged" to pay the same, a sheriff, in order to collect a tax of \$1,200, alleged to be due from a railroad receiver, has distrained property worth \$10,000, much of which belongs to third persons, is sufficient to require the interference by injunction of the court which appointed the receiver, regardless of any question as to the validity of the tax.

3. SAME—DUTIES OF RECEIVERS—ILLEGAL TAXATION.

Property in the hands of a receiver of a federal court is bound for the payment of state taxes in the same manner as any other property, but when a receiver believes a tax to be invalid it is his right and duty to apply to the court appointing him for protection.

4. SAME—RESTRAINING ORDER.

Where a receiver of a federal court applies to the court for protection against distraint of property in his hands for the payment of a state tax which he believes to be invalid, basing his action on a prior decision of the same court that the tax was illegal, the court will extend such protection by enjoining the sheriff, and requiring the property to be restored to the receiver, until the presumption of the soundness of such prior decision has been overcome.

In Equity. Petition by D. H. Chamberlain, as receiver of the property of the South Carolina Railway Company, asking the protection of the court as to certain property, which was distrained by a sheriff to enforce payment of taxes. Injunction granted.

Brawley & Barnwell, for petitioner.

D. A. Townsend, Atty. Gen., (Samuel Lord and Ira B. Jones, of counsel,) for the sheriff.

Before GOFF, Circuit Judge, and SIMONTON, District Judge.

PER CURIAM. Under an order of this court filed on the 5th day of December, 1889, in a cause within its jurisdiction, (Bound v. South Carolina Railway Company et al.,) D. H. Chamberlain, the petitioner, was appointed receiver of the South Carolina Railway Company. By this order all of the property of the railway company came and remained in the custody of the court, protected by injunction, and was placed in the care and management of the receiver as the organ and agent of the court. The petition sets forth that the possession thus confided to him has been disturbed, and that M. V. Tyler, sheriff of Aiken county, has distrained and has taken possession of a train of 14 freight cars in the custody and control of such receiver: that of these 14 cars 5 belong to the receiver and 9 belong to the roads outside of this state, but for the purposes of interstate commerce were in the care of the receiver as such; that 8 of them are laden with merchandise belonging to private persons in this state, in the hands of the receiver as a common carrier; that the property in the custody of the court and in the hands of its receiver has been assessed for taxation; that this assessment was illegal and void because of excessive valuation and discrimination; that the receiver had tendered and paid the full sum undoubtedly due on lawful assessment, and that there remained unpaid in the county of Aiken the sum of \$1,215.04, being the excess which is illegal and void; that for this sum of \$1,215.04 and costs the said Tyler, under a distraining execution issued by MacMitchell, county treasurer, had seized and detained the personal property aforementioned, worth in the aggregate \$10,000, a large part of it being the property of third persons, in the care of the receiver and in his custody as common carrier. The petition prays the protection of the court.

Upon hearing the petition a rule to show cause was issued and served on the said M. V. Tyler, with the usual restraining order. No attention or obedience whatever was paid to the restraining order. He has filed his return, justifying his action, and has not released or offered to release any part of the property detained, although the copy of the petition served on him stated the facts set forth above. The bare statement that property of the value of nearly \$10,000 has been distrained to pay \$1,215.04, and that much of it belongs to third parties, in no sense responsible for the tax, even if it be valid, would imperatively require the interference by injunction on the part of the court having this property in its custody. Section 230 of the General Statutes of South Carolina authorizes the sheriff to distrain for nonpayment of taxes sufficient personal property of the party charged with the tax to pay the same. This is the limit of his authority. Of course, he should not be confined to just enough property to pay the tax. But he

cannot, under cover of this, distrain upon \$10,000 for \$1,215.04. Nor under any circumstances can he distrain the property of persons other than the taxpayer. We cannot escape the conclusion that the purpose of the sheriff was not to follow the law, and that his action was the result of predetermination and intention to coerce the receiver and this court into the payment of the excessive tax, notwithstanding and despite of the claim that it was illegal and void.

But the case will not be rested on this ground. There can be no doubt that property in the hands of a receiver of any court, either of a state or of the United States, is as much bound for the payment of taxes, state, county, and municipal, as any other property. Persons cannot, by coming into this court, and, for the promotion of their interests, applying for and obtaining the appointment of receivers, obtain exemption from the paramount duty of a citizen. For this reason receivers in this district pay all just and lawful taxes without asking or needing the sanction of the court, and in their accounts such payments are passed without question. But, on the other hand, receivers are not bound to pay a tax in their judgment unlawful, without the order of the court; and when they consider the legality of the tax questionable it is their right—their manifest duty—to apply to the court either for instruction or protection. Especially is this the case when the question arises between the receiver and persons in the state, county, and municipal government as to the proper construction to be given to the law, upon which individuals may well differ, and it is his right and manifest duty to go to the court, whose creature he is, for instruction. He therefore pursued the proper course when he came in by this petition.

The research of counsel on both sides of this case has succeeded in finding five cases in which a receiver was driven to seek the protection of the court in the matter of taxation,—all of them of persuasive authority; none of them of conclusive authority. A petition was filed by a receiver before Judge Brewer in *Central Trust Co. v. Wabash, St. L. & P. Ry. Co.*, 26 Fed. Rep. 11, praying protection from the payment of a tax. It appeared that the only reason for the application was that it was inconvenient to the receiver to pay the tax, and that its validity was in no way questioned. The petition was rejected. But the learned judge shows distinctly his opinion that upon proper showing he would have entertained the petition. This is his language:

“In levying and collecting taxes the state is exercising its sovereign power. There should be no interference with its collection of these taxes in its prescribed and regular methods, even by a court having property in the possession of its receiver, unless it is first charged that the taxes are in some way illegal or excessive.

A bill was filed in *Hewitt v. Railroad Co.*, 12 Blatchf. 452, by receivers, to test the legality of a tax. It was heard by Mr. Justice Blatchford, who entertained the question, discussed it in a long and elaborate opinion, and sustained the legality of the tax. The same receivers came before him again in *Stevens v. Railroad Co.*, 13