the deceased from the operation of the execution laws of the state, and place them in the hands of his executor or administrator for the benefit of his creditors and distributees. But that doctrine only applies where the property has not been, previous to the death of the debtor, taken into custody by the federal court upon its process, and thus specifically appropriated to the satisfaction of such judgment. In this case, had Gomila died before the property in question had been seized upon process issued upon a judgment against him, the doctrine of the case cited might have been applicable. We do not recall any case now where the federal courts have not paid respect to the principle that all debts to be paid out of the decedent's estate are to be established in the court to which the law of his domicile has confided the general administration of estates; and that judgments against the deceased, unaccompanied by a seizure of property for their satisfaction, stand in the same position as other claims against his estate, and are to be paid in like manner. The jurisdiction of chancery to enforce the equitable rights of a nonresident creditor in the case of maladministration or nonadministration of the estate of a decedent, stands upon a different principle, (Payne v. Hook, 7 Wall. 425;) the rule prevailing, as stated in Hyde v. Stone, 20 How. 170, that the jurisdiction of the courts of the United States over controversies between citizens of different states cannot be impaired by the laws of the state which prescribe the modes of redress in their courts, or which regulate the distribution of their judicial power."

In the case at bar the showing is that Brown's estate is solvent, and no averment is made of fraud or maladministration or nonadministration or the like by the respondents as administrators thereof. Having arrived at the conclusion that the complainants have, with respect to the matters at issue in this case, a "plain, adequate, and complete remedy at law," it follows that the insistence of respondents upon their right to submit these matters to the verdict of a jury cannot be denied, and therefore this action in equity cannot be sustained. The decree of dismissal will follow the precedent in Buzard v. Houston, supra. The bill herein will be dismissed for want of jurisdiction, and at complainants' costs, but without prejudice to another action, at law.

REINACH v. ATLANTIC & G. W. R. CO. et al.

(Circuit Court, S. D. Ohio. January, 1878.)

1. FEDERAL COURTS—JURISDICTION—CITIZENSHIP — BENEFICIARY AND HOSTILE TRUSTEE.
   A suit to foreclose, brought by an alien railroad mortgage bondholder in his own right, is maintainable in a federal circuit court, although the trustee under the mortgage, who holds the legal title, is a citizen of the same state with some of the defendants; such suit being in hostility to the trustee, who refuses to act, and who is made a party defendant. Under such circumstances, the court will not look behind the parties to the record.

2. SAME—INJUNCTION—SUITS IN STATE COURTS.
   A federal court has no power to enjoin a receiver in possession of a railroad under appointment of a state court from issuing receiver's certificates, or to restrain the parties in the state court from carrying out an agreement sanctioned by that court. Rev. St. § 720.

3. JUDGMENT — COLLATERAL ATTACK — JURISDICTIONAL AND QUASI JURISDICTIONAL FACTS.
   There is a clear distinction between those facts which involve the jurisdiction of the court over the parties and the subject-matter, and those

quasi jurisdictional facts, without allegation of which the court cannot be set in motion, and without proof of which a decree should not be pronounced. In the absence of the former the judgment of the court is void, and may be attacked in collateral proceedings, while in respect to the latter it is conclusive, and cannot be questioned except on review.

4. SAME—STATE AND FEDERAL COURTS.

In a suit in a state court to foreclose a railroad mortgage, the trustees in a prior mortgage of a portion of the property filed a cross bill, claiming priority. Thereupon a committee appointed for the purposes of a former litigation by holders of the bonds secured by such prior mortgage entered into a contract postponing payment thereof, subject to approval of the court. The nature of the committee's appointment was brought to the attention of the court, but it confirmed and proceeded to carry out the contract for extension. *Held* that, as the court had jurisdiction of the subject-matter and the parties, the question of the committee's authority was only quasi jurisdictional, and the court's decision thereof was conclusive, so that a federal court could not question the proceedings based thereon in a collateral proceeding brought by a bondholder who was a party to the contract appointing the committee. Such bondholder's remedy was by appeal from the decree of the state court.

In Equity. On motion for an injunction. Denied.

Statement by BROWN, District Judge.

This was a bill to foreclose a mortgage made on the 1st day of October, 1855, by the Atlantic & Great Western Railroad Company, to Flagg and Stedman, to secure the issue of $4,000,000 of bonds, payable 21 years from date, i. e. on the 1st day of October, 1876. About $2,500,000 of such bonds were alleged to be outstanding. The complainant, who is an alien, alleges to own $15,000 of the same.

The defendants Schuchardt and Meyer were the successors of Flagg and Stedman as trustees under this mortgage, which was commonly known as the "Ohio Mortgage."

The railroad company subsequently made a second mortgage to John R. Penn, trustee, to secure $18,485,000 of bonds to be issued thereunder. On such second mortgage, foreclosure proceedings were instituted in the court of common pleas for the county of Summit, in the state of Ohio, and under the decree entered therein in April, 1869, the mortgaged property was sold, subject, however, to the lien of the first or Ohio mortgage. The complainant alleges that the defendant Schuchardt and his then cotrustee, Flagg, filed in such foreclosure suit a cross bill or petition praying, inter alia, that the road might be sold, and the proceeds used in paying the principal and interest of the bonds represented by them; that the court, however, refused so to adjudge.

By the decree in the Penn foreclosure suit, it was, among other things, provided, that any purchaser under the decree should purchase the property subject to the lien of the said Ohio mortgage, and to the rights of its trustees, and, as declared in said decree, that if default were made in the payment of the principal of the bonds secured by said Ohio mortgage when the same became due, and such default should continue for 10 days thereafter, leave was thereby "given to the said Flagg and Schuchardt, or their successors in said trust, to apply to this court, or to one of the judges thereof in vacation, upon notice in writing to said Upson and Penn, or their successors in their respective trust, * * * for an order directing the clerk of this court to issue an order upon this judgment, and sell the said premises, property, and franchises covered by said mortgage to said Flagg and Stedman, * * * together with the subsequently acquired property." Such decree also authorized the court or judge to grant such order, and to direct an order of sale to issue upon the praecipe of said Flagg or Schuchardt, or their successors in trust, if it should be satisfactorily proven that such default had been made and continued.

On the institution of the Penn foreclosure suit, a large body of the owners of the bonds under the Ohio mortgage, who resided in Europe, for the purpose of protecting their interests in said suit, and in order to realize the

money due on their bonds, (which, the complainant alleges, were then supposed to be due by reason of the nonpayment of interest thereon,) associated themselves together, and constituted the firm of Wertheim & Gompertz and Frederick W. Oewel, all bankers in Amsterdam, as their agents for the purpose of representing them in the said suit, and of enforcing their rights under said bonds. A copy of the agreement so entered into was annexed to the bill.

It provided, among other things, that the holders of the bonds should surrender them to their said agents, and that they were to issue certificates therefor, and such bonds were to remain in the custody of the persons designated therein.

The complainant surrendered his bonds under said agreement, and received a certificate therefor.

The decree in the Penn foreclosure suit, adjudging that the principal of the Ohio mortgage had not become due, was claimed to have terminated the agreement, and the purposes for which it was entered into, although the owners of the bonds thereafter left the same in the custody of the said agents, who collected and remitted the interest thereon.

The purchasers under the Penn decree subsequently became the Atlantic & Great Western Railroad Company, and thereafter said company made another mortgage to the defendants Taylor and Dunphy, as trustees, and issued thereunder a large number of bonds, amounting to upwards of $56,000,000. The company, shortly after the issuing of said bonds, became financially embarrassed; and thereupon, in 1874, the defendants Taylor and Dunphy commenced a suit in the common pleas of Summit county for the foreclosure of such mortgage, in which Schuchardt and Meyer intervened and filed a cross petition. In such suit the defendant Devereux was appointed receiver, and an order was made permitting the receiver to issue receiver's certificates for the running and other expenses of the road, which, it was conceded in the bill filed by Taylor and Dunphy, could not be paid from the earnings of the road. The order likewise provided that the receiver's certificates should take precedence of the lien created by the Ohio mortgage, under which Meyer and Schuchardt were then the acting trustees. Complainant alleges that instead of proceeding to the foreclosure of the Ohio mortgage when the same became due, or exercising the right conferred on them by the decree in the Penn suit, Meyer and Schuchardt consented to the other defendants procuring an order from the court in Summit county confirming an alleged contract for the extension of the payment of the principal of the Ohio mortgage for three years from its maturity. Such contract purported to be entered into by Wertheim & Gompertz and Oewel, claiming to represent a majority of the Ohio bondholders, and a committee on the part of subsequent lienors and of stockholders, the purport and result of which, it is claimed, would be to extend the time of payment of the principal due on the Ohio mortgage for three years; to permit the receiver, Devereux, during such three years, to remain in possession, and to create a prior lien to such first mortgage by the continued issuance of receiver's certificates for money necessary to be borrowed to pay the interest on the Ohio mortgage during such additional three years. The defendants Taylor and Dunphy, as such trustees and plaintiffs, petitioned the Summit county court to confirm such contract, and the defendants Schuchardt and Meyer represented to the court that a large majority of bondholders under the Ohio mortgage approved such contemplated contract; that a minority did not approve; but that they thought the contract would be for the benefit of the cestuis que trustent,—and submitted the entire matter to the consideration of the court. It was not shown to the said court that any of the bondholders had personally approved or ratified such contract, but its alleged ratification or approval consisted in its execution by Wertheim & Gompertz and Oewel, by an alleged attorney. The only authority in the premises possessed by Wertheim, Gompertz, and Oewel was derived from the agreement, which was called to the attention of the Summit county court. One Von Langen appeared, and objected to said extension of the mortgage, and called upon Meyer and Schuchardt to collect the principal due on the mortgage, which they refused to do.

The defendant Schuchardt, after the maturity of the mortgage, resigned his position as trustee by a letter of resignation addressed to the Atlantic &

Great Western Railroad Company, and by it accepted. The complainant averred that such alleged resignation was nugatory, and could not legally be effected in such manner, and that the defendant Schuchardt was still one of the trustees under said mortgage.

The complainant alleges that other bondholders, similarly situated, applied to the Summit county court for leave to intervene, and to be heard in opposition to the confirmation of said alleged contract; that their right in that respect was opposed by all the defendants, including the defendant Meyer, claiming that the application for the confirmation of said alleged contract was purely ex parte, and that he (Meyer) represented all the bondholders, and that they therefore had no right to intervene; that the court accepted such view, and declined to admit said dissenting bondholders to such suit. Complainant thereupon filed his bill in this court, and prayed:

(1) That the mortgage might be foreclosed, the property sold, and the moneys arising from the sale brought into court, to be distributed to the parties entitled thereto.

(2) That during the pendency of this suit the said Devereux, or some other fit and proper person, might be appointed receiver of the property covered by the said mortgage.

(3) That the said Devereux might be restrained from issuing any receiver's certificates, which should take precedence of the lien of the said mortgage; that the said Meyer might be decreed to deliver to complainant the said bonds so deposited by him under the said agreement with the Amsterdam bankers; and that, in default of his so doing, complainant might have the same relief upon the said certificate as if the said bonds represented thereby were produced by the said Meyer.

(4) That this court might prohibit the execution of any agreement by any party defendant whereby the time of payment of the said mortgage, or of the bonds issued thereunder, should be postponed, enlarged, or in any way prolonged.

(5) That any such agreement, if executed, might be set aside. and declared to be illegal and void.

(6) That complainant might have such other relief, or such further and different relief, as should be just and equitable.

Charles M. Da Costa and Stanley Matthews, for complainant.
Mr. Adams, for defendant Meyer.
R. P. Ranney, for Taylor and Dunphy.
Durbin Ward, for Devereux, receiver.

Before SWING and BROWN, District Judges.

BROWN, District Judge, (orally, after stating the facts.) Entertaining, as we do, no serious doubts as to what our conclusion in this case ought to be, we have determined to dispose of it while the facts are fresh in our minds, and while the counsel who argued the case are present in court, although the limited time we have had for the examination of authorities will prevent that extended review of the facts and the law of the case which its importance, and the ability with which it was argued, invite.

1. The first defense made to this bill is that this court has no jurisdiction, inasmuch as the trustee who holds the legal title to the bonds is a citizen of the same state as several of the defendants. It appears, however, that the plaintiff, who is a bondholder under Mr. Meyer, trustee, is an alien,—a citizen of the republic of France; that the Atlantic & Great Western Railroad Company and Mr. Devereux, the receiver, are citizens of Ohio, though the latter is a resident of the northern district; that Schuchardt, Meyer, and

Dunphy are citizens of New York; and Taylor, a citizen of New Jersey. Under these circumstances, so far as the question of citizenship is concerned, we think the court has full jurisdiction of the case.

There is, undoubtedly, a class of cases which hold that, where an action is prosecuted by a merely nominal plaintiff,—a person who, by law or statute, is made a necessary plaintiff,—the jurisdiction of the court is to be determined by the real parties to the action; but we believe this doctrine is confined to that class of cases of which Brown v. Strode, 5 Cranch, 303, is the earliest example. This was an action upon an executor's bond, given to justices of the peace, in conformity with a statute of Virginia. The object of the suit was to recover a debt due from the testator, in his lifetime, to a British subject. The defendant being a citizen of Virginia, the court held it had jurisdiction of the case.

A somewhat similar case was that of McNutt v. Bland, 2 How. 10. This was an action on a bond given by a sheriff of a county in Mississippi to the governor of the state, and was prosecuted in the name of the governor for the use of citizens of New York. Upon demurrer it was held that the circuit court had jurisdiction. "In this case," said the court, "there is a controversy and suit between citizens of New York and Mississippi; there is neither between the governor and the defendants; as an instrument of the state law to afford a remedy against the sheriff and his sureties, his name is on the bond, and to the suit upon it, but in no just view of the constitution or law can he be considered as a litigant party. * * * Where the real and only controversy is between citizens of different states, or an alien and a citizen, and the plaintiff is, by some positive law compelled to use the name of a public officer, who has not, or ever had, any interest in or control over it, the courts will not consider any others as parties to the suit than the persons between whom the litigation before them exists."

The case of Irvine v. Lowry, 14 Pet. 293, draws clearly the distinction between the cases where the court can, and where it cannot, take jurisdiction. This suit was brought upon a promissory note against the defendant, the maker of the note, who was a citizen of the state of New York, by the plaintiff, the payee of the note, who was a citizen of Pennsylvania, for the use and benefit of a certain bank, part of the stockholders of which were also citizens of New York. The court observed:

"Nothing then remains but to ascertain from the record, as certified, whether the bank is the real plaintiff, for, if they are not, then, as Irvine is admitted to be a citizen of Pennsylvania, and Lowry, of New York, the jurisdiction is undoubted. The paper upon which the suit is brought is not negotiable by the usage or custom of merchants. * * * The bank, therefore, cannot sue in their own name, in virtue of the indorsement of Irvine in blank, nor could they so sue it if it were specially indorsed to them, because the legal right of action would still remain in Irvine, though the equitable interest in the thing promised may have passed to the bank. * * * Standing as such to the bank, their rights are derivative through him, and as the indorsement passes only an equity the legal interest is in him. He is the real plaintiff in a court of law, in which the legal rights alone can be recognized."