

We cannot better conclude this opinion than by the following quotation from the decision of Mr. Justice Bradley in *Haines v. Carpenter*, 91 U. S. 254:

"A mere statement of the bill is sufficient to show it cannot be sustained. * * * In the first place, the great object of the suit is to enjoin and stop litigation in the state courts, and to bring all the litigated questions before the circuit court. This is one of the things which the federal courts are expressly prohibited from doing. By the act of March 2, 1793, it was declared that a writ of injunction shall not be granted to stay proceedings in a state court. * * * This objection, alone, is sufficient ground for sustaining the demurrer to the bill. * * * The state courts have full and ample jurisdiction of the cases, and no sufficient reason appears for interfering with their proceedings."

See, also, *Wilmer v. Railroad Co.*, 2 Woods, 409.
The motion for an injunction must be denied.

RISK v. KANSAS TRUST & BANKING CO.

(Circuit Court, D. Kansas. June 29, 1893.)

RECEIVERS—RIGHTS OF SECURED CREDITORS.

The appointment of a receiver of an insolvent corporation on the bill of an unsecured creditor does not deprive secured creditors or their trustees of the right to possess, control, and enforce their securities, and, if the receiver has come into possession thereof, the court will require him to deliver them up.

In Equity.

In the matter of the application of Mr. A. G. Otis, a debenture bond holder, for the delivery of the mortgages securing his bonds by the receiver to a trustee for his benefit. Application granted.

H. M. Jackson, for petitioner.

David Martin, for receiver.

SANBORN, Circuit Judge. On March 13, 1893, the complainant in this action obtained a judgment at law against the defendant in this court for about \$9,000. This judgment was based on an unsecured debt of the defendant, and the complainant had no beneficial interest in the debenture bonds hereafter mentioned that were issued by the defendant, or in the collaterals pledged for their payment. On the same day, upon motion of complainant, without notice to the secured creditors, and with the consent of the defendant, a receiver of the property of the defendant was appointed. Prior to the commencement of these proceedings the defendant had issued a series of debenture bonds called "Series A," in the following form:

"The Kansas Trust and Banking Company of Atchison, Kansas, for value received, is indebted unto the registered holder hereof if registered, otherwise to —, in the sum of — dollars, which shall be due on the — day of —, 18—. This bond draws interest at the rate of — per cent. per annum, payable semiannually, according to the interest coupons hereto attached. * * * This bond is secured by mortgages on real estate deposited with the First National Bank of Atchison, Kansas, in trust, in ac-

cordance with the certificate of said bank hereto attached, and without which certificate this bond is not valid.

[Signed]

"The Kansas Trust and Banking Company."

The certificate indorsed on the said debenture bonds was in the following form:

"I, —, president or cashier of the First National Bank of Atchison, Kansas, hereby certify that as security for the due payment of the debenture bond of the Kansas Trust and Banking Company of Atchison, Kansas, hereto attached, there are deposited in this bank mortgages on real estate equal in amount to the amount of said bond. Said mortgages are not to be removed from the custody of the bank until the said bond is paid, and evidence of such payment is furnished to said bank, except on the condition that the said the Kansas Trust and Banking Company shall deposit in place thereof other mortgages equal in amount to those, or cash, at the option of the Kansas Trust and Banking Company."

This certificate was signed by the president or cashier of the bank. The face value of these outstanding bonds is \$18,000, and they are all owned by Mr. A. G. Otis. They were secured by real-estate mortgages and their accompanying bonds or notes, which had been made by third parties, and deposited with the bank as security for these bonds, under the contracts above set forth. Under an order of this court, these collaterals, which amount upon their face to about \$18,000, but which are insufficient in value to pay these debenture bonds, were delivered to the receiver of the defendant's property pending an application of Mr. Otis for an order for their delivery to him, or to a trustee or receiver for his benefit. That application is now to be disposed of.

The application must be granted. The receiver in this case represents the insolvent debtor and its unsecured creditors. He has no higher right to these collaterals than the debtor had. He is the receiver of the property of the insolvent debtor. He is not the receiver of the property of the secured creditors of that debtor. The contract of the debtor was that these mortgages should not be removed from the custody of the bank until the bonds were paid, except as other mortgages, equal in amount, were deposited in their place. The debtor has not paid, and cannot pay, the bonds. The collaterals are of less value than the amount of the debt they are pledged to secure. Mr. Otis owns that entire debt, and is in reality the only person beneficially interested in the notes and mortgages pledged to secure it. The only right the defendant or its receiver has here is the right to redeem these collaterals by paying the bonds, and that is a right without value.

The appointment of a receiver of an insolvent corporation on the bill of an unsecured creditor does not avoid its contracts with secured creditors, or deprive them or their trustees of the right to possess, control, and enforce their securities. High, Rec. § 359; In re Dissolution of Home Provident Safety Fund Ass'n, (N. Y. App.) 29 N. E. Rep. 323. When the receiver pays the bonds he will be entitled to the possession of the collaterals, but until that time the creditor to whom they belong, or a trustee for his benefit, is entitled to their possession, and is entitled to enforce their collection in the interest of the creditor for whose benefit they were pledged.

I will appoint a trustee, to whom the receiver may deliver these bonds, and who may proceed to collect them, to pay the debenture bonds from their proceeds, to report his acts to this court, and to pay over any surplus remaining after paying the bonds, if any there should be, to the receiver of the defendant's property.

STREET v. MARYLAND CENT. RY. CO. et al.

(Circuit Court, D. Maryland. September 25, 1893.)

RECEIVERS—APPOINTMENT AND REMOVAL.

While the suggestions and recommendations of persons who substantially own property about to be intrusted to a receiver are of great weight with the court in making an appointment, yet the court will not remove a railroad receiver, whose management has been able, efficient, and impartial, at the request of the controlling stockholder and his associates, when the litigation is not for the purpose of foreclosing a mortgage, but is instituted by a minority stockholder on the ground that the bonded indebtedness and the issues of stock are being vastly increased without any corresponding increase of assets, and mainly for the benefit of the controlling stockholder.

In Equity. Suit brought by Joseph M. Street against the Maryland Central Railway Company, the Baltimore & Lehigh Railroad Company, the Baltimore Forwarding & Railroad Company, the Mercantile Trust Company of Baltimore, trustee, and John H. Miller, Moses H. Houseman, and William Gilmore. Heard on motion to remove a receiver. Denied.

Stephenson A. Williams, for complainant.

John P. Poe, R. R. Boardman, N. P. Bond, D. G. McIntosh, and R. M. Venable, for respondents.

Before BOND, Circuit Judge, and MORRIS, District Judge.

BOND, Circuit Judge. The motion before us is the application of the Baltimore & Lehigh Railroad Company and John Henry Miller and Moses H. Houseman for the removal of William H. Bosley from the receivership of the Baltimore & Lehigh Railroad Company and the Baltimore Forwarding & Railroad Company, to which position he was appointed in this case by the circuit court for Hartford county on 17th May, 1893. The grounds for removal of this receiver stated in the petition of Miller, Gilmore, and Houseman are (1) that Bosley was improperly appointed; (2) that his appointment was the result of an unlawful conspiracy between the complainant, Street, Crumpton, and Kennefick; (3) that he has appointed Crumpton general manager of the railroad, although aware that Crumpton is incompetent; (4 and 5) that he desires to promote certain railroad schemes not in the interest of the Baltimore & Lehigh Railroad Company, and has unfairly reported the condition of its property; (6) that he has not sufficient experience to enable him to conduct and manage the property.

The petition of the Baltimore & Lehigh Railroad Company states substantially the same reasons, and also asks for Bosley's removal