stock subscriptions. As George W. Johnson, the purchaser at the receiver's sale, and his associates, had acquired the paramount lien of the contractor, Simpson, by virtue of the assignment to them of the decree of this court in his favor, I see nothing wrong in the contract of January 12, 1887, between Johnson and William W. Reed. Besides, unquestionably, that contract was immediately made known to the board of directors of the New Castle Northern Railway Company, for, on the day of its date, the board, by a unanimous vote (the plaintiff himself, then a director, uniting therein), instructed the company's solicitor to withdraw the appeal which the company had taken from the decree in favor of Simpson; which withdrawal was a fundamental condition of the contract between Johnson and Reed. Accordingly, the appeal was withdrawn by the company, which thus promoted the consummation of the contract now assailed; and without objection on the part either of the company or of the plaintiff, Holton, the sale to Johnson was confirmed by the court.

The bill of complaint must be dismissed, with costs; and a decree to that effect may be prepared by counsel.

COHEN et al. v. SOLOMON et al.

(Circuit Court, D. Kansas, Second Division. March 5, 1895.)

1. FORECLOSURE — DETERMINATION OF ADVERSE CLAIMS TO MORTGAGED PROPERTY.

   One S. mortgaged certain lands owned by him, to B. Subsequently the property became delinquent for taxes, and was sold therefor, and a certificate of purchase issued on the sale, and assigned by the purchaser to one W., a brother-in-law of S. While W. held such tax certificate, and the lien evidenced thereby, a suit was commenced, in the federal court, by the executors of B. to foreclose the mortgage made by S.; and, while this foreclosure suit was pending, W. brought suit in a state court to quiet his title to the land under the tax certificate, making service on the mortgagor and mortgagee by publication, and obtaining a decree by default, quieting title in him. The representatives of the mortgagee first learned of the proceedings in the state court after such decree; and they then brought in W. as a party to the foreclosure suit, praying to have the tax title set aside. *Held*, that the court had jurisdiction in the foreclosure suit to determine and enforce all W.'s rights under his tax certificate, as well as the validity of his tax title.

2. COURTS—JURISDICTION—WHEN EXCLUSIVE.

   Held, further, that the federal court first obtained jurisdiction of the matter in dispute, to wit, the mortgaged premises and the rights of the parties thereto; and, its jurisdiction being thereafter exclusive, the proceedings in the state court were without jurisdiction, and should be set aside as void.

This was a suit by Josiah Cohen and others, as executors of one Bernd, to foreclose a mortgage given by the defendant Solomon, and to have an alleged tax title to the mortgaged premises in defendant Wallenstein set aside, as well as a mortgage made by Wallenstein to the defendant Alexander. Wallenstein filed a cross bill for the foreclosure of the latter mortgage. The cause was heard on the pleadings and proofs.

Henry Wollman and Harris & Vermilion, for complainants.
W. E. Stanley and T. B. Wall, for defendants.

WILLIAMS, District Judge. In this case, Hardy Solomon, being the owner of the premises in question, with his wife, executed a mortgage upon the property to Bernd, the complainants' testator, which mortgage is by this suit sought to be foreclosed. At the time suit was commenced, the property had become delinquent for taxes for one year, and had been sold, and a certificate of purchase issued upon the tax sale. Subsequently the holder of the tax certificate of purchase brought suit in the state court of Kansas to quiet his title to the premises in controversy, obtained service against the mortgagee and mortgagor by publication under the state statute, and afterwards obtained a decree in the state court by default, quieting title in him, as against the said parties defendant thereto. The complainants herein, becoming apprised of the proceedings in the state court suit for the first time after the said decree was obtained, thereupon filed a supplemental bill of complaint in this suit, making the plaintiff in the said state court suit and his assignee parties defendant, and praying that the said tax title may be set aside. It is herein stipulated and agreed that the said tax deed is voidable under the laws of Kansas, where the lands lie. By the terms of the said mortgage, it is made the duty of the mortgagor to pay all assessments on the property. It is agreed that the assignee of the certificate of purchase, Wallenstein, is the brother-in-law of the mortgagor, Solomon. Wallenstein is the party who brought suit to quiet title in the state court.

The main question is as to the effect of the said suit brought in the Kansas court. At the time this suit was commenced and Solomon and wife made parties defendant thereto, Wallenstein held only the lien or equitable title of a purchaser at a tax sale to the premises in controversy. Having this lien or claim upon the property involved in the litigation, he was charged with constructive notice of the pendency of this suit, and it was incumbent on him to apply and be made a party to this suit, in which he could have enforced any claim he might have to the mortgaged premises.

The supreme court has several times held that a tax title to the mortgaged property may be litigated, enforced, or set aside in the foreclosure suit.

In Mendenhall v. Hall, 134 U. S. 559, 10 Sup. Ct. 616, it is held that in a suit to establish a mortgage, and for a sale thereunder, it is competent to unite as defendants both the mortgagor and the party claiming the property adversely to the lien of the mortgage by virtue of proceedings for a sale for taxes had subsequently to its execution. Justice Harlan, speaking for the court, says:

"If the plaintiff was entitled to have the property sold in satisfaction of the debt secured by the mortgage, it was his right to have it sold, freed from any apparent claim thereon wrongly asserted by the holder of the tax title. Such relief could not be had without making the latter a party to the suit."

Again, in Hefner v. Insurance Co., 123 U. S. 747, 8 Sup. Ct. 337, the supreme court, by Justice Gray, examine this question, collect the authorities holding both ways, and decide that:

"Upon principle, it was within the jurisdiction and authority of the court, upon a bill in equity for the foreclosure of the plaintiff's mortgage, to determine the validity or invalidity of Callanan's tax title; and he was a proper, if not a necessary, party to such bill."

This doctrine is so held in the case of a tax title arising, as does the present one, after the date of the mortgage, although recognizing the general rule that:

"As a general rule, a court of equity, in a suit to foreclose a mortgage, will not undertake to determine the validity of a title prior to the mortgage and adverse to both mortgagor and mortgagee, because such a controversy is independent of the controversy between the mortgagor and mortgagee as to the foreclosure or redemption of the mortgage, and to join the two controversies in one bill would make it multifarious."

Wallenstein could have enforced all his rights under the certificate of purchase, and under the tax deed, which he obtained soon after the commencement of this suit, by becoming a party hereto, and appealing to this court for his remedy, if he had any. Not having chosen to do so, the inquiry arises whether it was competent for him to obtain the relief he sought through the action of the state court. The practical effect of the course pursued, if allowed to have full operation, has been to utterly defeat the remedy sued for in this tribunal, nullify its action, and remove from its cognizance the very subject-matter before it. Can this be done consistently with the relative powers of courts of different jurisdictions, the independence allowed to each, and the harmony that should exist among them? No principle is more firmly entrenched in the law than the doctrine that, when one court acquires jurisdiction and power over the res, no other court can interfere with its possession or control. This doctrine has been affirmed and applied by the supreme court in a long line of adjudications, which have established this as one of the cardinal principles governing the proceedings of courts. Heidritter v. Oilcloth Co., 112 U. S. 294, 5 Sup. Ct. 135; Wiswall v. Sampson, 14 How. 52; Peale v. Phipps, Id. 368; Hagan v. Lucas, 10 Pet. 400; Williams v. Benedict, 8 How. 107; Pulliam v. Osborne, 17 How. 471; Taylor v. Carryl, 20 How. 583; Youley v. Lavender, 21 Wall. 276; Bank v. Calhoun, 102 U. S. 256; Barton v. Barbour, 104 U. S. 126; Covell v. Heyman, 111 U. S. 176, 4 Sup. Ct. 355. In these cases the general doctrine is laid down that where one court has acquired the custody or possession or control of the subject-matter of the controversy through its receiver or marshal, by writ of attachment or other process, no other court can in any manner interfere with that possession or control. Is the principle therein declared broad enough to embrace the present case? Here suit is brought to foreclose a mortgage, in which the court has power to adjudicate all liens and claims against the res, ascertain their amount, order a sale of the property, confirm the sale, direct a deed of conveyance to the purchaser at the sale, and, by its writ of assistance, remove the occupant, and place the purchaser in absolute possession of the property. Not only so, but the court, moreover, may, at any time when it deems it equitable and right so to do, appoint a receiver of the property pending the suit,

and thereby assume actual legal custody of the same through its officer.

While the question thus presented is probably a new one in some of its aspects, it seems to involve no unreasonable extension of the recognized doctrine. In Wallace v. McConnell, 13 Pet. 136, this principle was applied in the case of an ordinary action upon a promissory note, brought in the federal court, where the state court in Alabama had issued a garnishment against the defendant, and thereby sought to apply a portion of the indebtedness due on the note to satisfy the claim attempted to be enforced by attachment proceedings in the state court. Justice Thompson, in delivering the opinion of the court, says:

"The next point presents the question as to the effect of the proceedings under the attachment law of Alabama, as disclosed in the plea. The plea shows that the proceedings on the attachment were instituted after the commencement of this suit. The jurisdiction of the district court of the United States and the right of the plaintiff to prosecute his suit in that court having attached, that right could not be arrested or taken away by any proceedings in another court. This would produce a collision in the jurisdiction of courts that would extremely embarrass the administration of justice. If the attachment had been conducted to a conclusion, and the money recovered of the defendant before the commencement of the present suit, there can be no doubt that it might have been set up as a payment on the note in question. The attaching creditor would, in such case, acquire a lien upon the debt binding upon the defendant, and which the courts of all other governments, if they recognize such proceedings at all, could not fail to regard. If this doctrine be well founded, priority of suit will determine the right. The rule must be reciprocal. And, where the suit in one court is commenced prior to the institution of proceedings under attachment in another court, such proceedings cannot arrest the suit. And the maxim 'Qui prior est tempore portior est jure' must govern the case. This is the doctrine of this court in the case of Renner v. Marshall, 1 Wheat. 216, and also in the case of Beaston v. Bank, 12 Pet. 102, and is in conformity with the rule that prevails in other courts in this country, as well as in the English courts, and is essential to the protection of the rights of the garnishee, and will avoid all collisions in proceedings of different courts, having the same subject-matter before them. Embree v. Hanna, 5 Johns. 101; Bowne v. Joy, 9 Johns. 221, and cases there cited."

The principle of this case would seem to settle the main controversy in this. Here the subject-matter of the suit in this court is assuredly the mortgaged premises and the rights of the parties thereto. The subject-matter of the suit in the district court of Sedgwick county was the same. No clearer instance could be conceived of a wresting from this court of the very subject-matter before it than would occur in this case if the action of the state court was permitted to stand. A suit commenced for the sole purpose of applying property to the satisfaction of a debt would thus be absolutely defeated and rendered abortive by the action of another court commenced after this suit was instituted. All sense of comity and propriety in the relations of courts is wounded by such proceedings. While it is true that there is no receivership in the present case, and the actual possession of the property in litigation has not been interrupted in fact, still it is also true that a foreclosure suit is, to some extent, in the nature of a proceeding in rem, and the aim and scope of such a suit is to seize the rem, and convey it discharged of all liens and claims. Brewer, J., in Bradley v. Parkhurst, 20 Kan. 462.

In Heidritter v. Oilcloth Co., 112 U. S. 294, 5 Sup. Ct. 135, the court held that:

"When the object of the action requires the control and dominion of the property involved in the litigation, that court which first acquires possession, or that dominion which is equivalent, draws to itself the exclusive right to dispose of it for the purposes of its jurisdiction."

In that case the court was considering the effect of the attempt in the state court to enforce a mechanic's lien upon property which had been proceeded against as for a forfeiture under the revenue laws in the federal court. Says Justice Matthews, quoting Justice Miller:

"The case becomes in its essential nature a proceeding in rem. While the general rule in regard to jurisdiction in rem requires an actual seizure and possession of the res by the officer of the court, such jurisdiction may be acquired by acts which are of equivalent import, and which stand for and represent the dominion of the court over the thing, and in effect subject it to the control of the court."

Language could hardly be employed more aptly to describe the attitude of this court towards the mortgaged premises herein involved. Says Matthews, J., continuing:

"This may be by the levy of a writ, or the mere bringing of a suit. * * * The land might be bound without actual service or process upon the owner, in cases where the only object of the proceeding was to enforce a claim against it specifically, of a nature to bind the title. In such cases the land itself must be drawn within the jurisdiction oi the court, by some assertion of its control and power over it. This, as we have seen, is ordinarily done by actual seizure, but may be done by the mere bringing of a suit in which the claim is sought to be enforced, which may by law be equivalent to a seizure, being the open and public exercise of dominion over it for the purpose of the suit."

In Union Trust Co. v. Rockford, R. I. & St. L. R. Co., 6 Biss. 197, Fed. Cas. No. 14,401, the federal court had dismissed a bill. Afterwards a bill was filed in the state court, and a receiver of the property involved in both suits appointed. Then the dismissal in the federal court was set aside, and a supplemental bill filed, and the federal court, Blodgett and Drummond, JJ., held that:

"The proper application of the rule that the court first taking cognizance of the controversy is entitled to retain jurisdiction to the end of the litigation, and incidentally to take the possession of and control the res,—the subject-matter of the dispute,—to the exclusion of all interference from other courts of co-ordinate jurisdiction, does not require that the court which first takes jurisdiction of the case shall also first take, by its officers, possession of the thing in controversy, if tangible and susceptible of seizure; for such a rule would only lead to unseemly haste on the part of officers to get the manual possession of the property, and, while the court first appealed to was investigating the rights of the respective parties, another court, acting with more haste, might, by a seizure of the property, make the first suit wholly unavailing."

In Gaylord v. Railway Co., 6 Biss. 286, Fed. Cas. No. 5,284, Drummond, J., affirms the same doctrine. In that case the bill filed in the federal court was amended, and, between the date of the filing of the bill and the amendment, another creditor instituted a suit in the state court, and had a receiver appointed, who took possession. The court held that the only question that arises is whether the federal *court had* jurisdiction. If it had, then the principle applies that no other court of concurrent jurisdiction could interfere with the

res, which was the subject-matter of the controversy. Drummond, J., says:

"We think that there is no other safe rule to adopt, in our mixed system of state and federal jurisprudence, than to hold that the court which first obtains jurisdiction of the controversy, and thereby of the res, is entitled to retain it until the litigation is settled. * * * It is not material that a receiver appointed by the state court had first taken actual possession of the property, provided the federal court had the prior right to control the res."

In this case, inasmuch as Wallenstein, the holder of the tax title, commenced his suit in the state court to have his title adjudicated upon and quieted, against the parties to this suit, after this suit had been begun, and the subject-matter thereof brought under the dominion and control of this court, for the purpose of adjudicating the rights of the parties to this suit thereto, and of determining the nature and extent of the claim of the mortgagee to the property, and of subjecting it, if found liable thereto, to sale and conveyance to meet and discharge the said claim, and of delivering it into the possession of the purchaser at the sale, we are of the opinion that this case is comprehended within the rule hereinbefore laid down and clearly established: That the state court was without jurisdiction to entertain and determine said suit, and that all its proceedings therein are null and void; that the said tax title be, and the same hereby is, set aside as void; and inasmuch as the defendant Alexander, the grantee of the tax title, is equally charged with constructive notice of the pendency of this suit, and stands in no better light than his assignor, Wallenstein, that the said tax title is void in his hands; that the cross bill of Wallenstein, brought to foreclose the mortgage executed to him by Alexander upon the transfer of said tax title, be, and the same hereby is, dismissed; and as it is agreed between the parties that the mortgage which this suit was originally commenced to foreclose was executed and assigned to the complainants' testator, as alleged in the bill, and that the amount claimed therein is due, it is further decreed that the said complainants have a decree for the said amount of their said mortgage, and foreclosing the same according to law.

McBEE v. SAMPSON et al.

(Circuit Court, D. South Carolina. March 15, 1895.)

1. ASSIGNMENT OF LEASE—LIABILITY OF ASSIGNEE.
   An assignee of a lease, holding by assignment from the original lessee, may assign such lease to any person, even though insolvent, and assumes no responsibility for the payment of rent by his assignee.

2. SAME—COLORABLE ASSIGNMENT.
   It seems that, where an assignment of a lease is merely colorable, or is made in bad faith, for the purpose of evading responsibility, equity may give relief to the landlord.

3. SAME—INJUNCTION—ADEQUATE REMEDY AT LAW.
   Equity will not interfere to enjoin the assignment of a lease on the ground that the proposed assignee is insolvent, where the responsibility of the assignor would continue, and the landlord accordingly has an adequate remedy at law.

This was a suit by Vardry A. McBee against O. H. Sampson, H. P. Hammett, and others to restrain the assignment of a lease. Heard on motion to continue a preliminary injunction.

Perry & Heyward, for complainant.

Cothran, Wells, Ansel & Cothran, T. Q. Donaldson, and A. H. Donaldson, for defendants.

SIMONTON, Circuit Judge. The facts of this case are these, as set out in the bill: Complainant, Vardry A. McBee, and his brother, Alexander McBee, on 16th March, 1876, executed to the Camperdown Mills, a corporation of South Carolina, a lease of a tract of land, situate in the city of Greenville, S. C., on both sides of the Reedy river. The term of the lease was 30 years from the date of execution. The rent reserved was an annual rental of $4,870 on the 1st of March, 1876, to 1st March, 1884, and of $5,400 from 1st March, 1884, to 1st March, 1891, and from the 1st March, 1891, to the end of the term, $6,250; the rent payable semiannually, together with taxes accruing on the property. Nothing whatever was said in the lease concerning the assignment thereof by the lessee. The lessee, therefore, had full power to assign the lease at any time during its term. Greenaway v. Adams, 12 Ves. 395; Tayl. Landl. & Ten. § 402. In 1884 the Camperdown Mills became insolvent, and went into the hands of a receiver appointed by the state court; and on the 1st of August, 1885, pursuing an order of the said court, the receiver sold at public auction all the property of the Camperdown Mills, including this lease. At that sale, H. P. Hammett purchased the entire property of the Camperdown Mills, including this lease, for the sum of $70,000. A deed of conveyance was executed by the receiver to H. P. Hammett and his associates, in which each of the associates was mentioned by name, and the amount of his interest in the purchase specified. All those associates of H. P. Hammett who are now alive are made parties defendant to this proceeding, together with the personal representatives of those of them who are now deceased. Hammett and his associates went into the possession of the property; carried on the business thereof until the January following. In the meantime they had obtained an act of incorporation from the legislature of the state of South Carolina, and had accepted the same, and thenceforward the premises were occupied and the business carried on by this corporation, which bore the name of the Camperdown Cotton Mills. No assignment in writing was made of this lease by Hammett and his associates to the Camperdown Cotton Mills. The Camperdown Cotton Mills continued in business until some time in April, 1894, when it in turn became insolvent, and passed into the hands of a receiver under proceedings instituted in this court by O. H. Sampson & Co. On the 31st of October, 1894, all the assets of the Camperdown Cotton Mills, except this lease, were sold by James L. Orr, Esq., who had been appointed receiver. At this sale O. H. Sampson & Co. became the purchasers. All of the property of the Camperdown Cotton Mills being thus disposed of, except this lease, a meeting of the directors of the said company

has been called for the purpose of considering the propriety of demanding from Hammett and his associates a formal written assignment of the lease to the Camperdown Cotton Mills. In proceedings heretofore had in this court in the original cause it was held that a written assignment was necessary to transfer this lease. On receiving notice of this proposed action on the part of the directors, the complainant filed this bill. After reciting in substance the facts above stated, and charging that the object of the meeting was to transfer to an insolvent corporation this lease, executed to him and his brother, and thereby to substitute this insolvent in place of Hammett and his associates, who, he claims, are responsible to him for the payment of the rent, and who are abundantly able to meet this responsibility, and asserting that, if this proceeding is allowed, he will be entirely deprived of the means of collecting his rent, and so defeat the very object of this lease, the bill prays that defendants be enjoined from making or attempting to make any deed, assignment, or transfer of any sort of the lease in question to the Camperdown Cotton Mills, or to any other corporation or person unable to pay the installments of rent as they fall due thereunder, without first securing to the complainant a prompt payment of the rent. Alexander McBee, who was one of the lessors, some time previous to this suit assigned all his right, title, and interest in the lease to the complainant. The rent of the premises up to the filing of this bill, with the exception of a period between the 1st day of March, 1894, and 30th day of April, 1894, has all been paid.

Upon the filing of the bill a rule was issued against the defendants to show cause why the prayer of the bill should not be granted, and an injunction issued in accordance therewith. The defendants have filed their return, in which, among other things, they say "that they are advised as matter of law, and aver, that, being simply assignees of said lease, they have the legal right, subject to the rights of said Camperdown Cotton Mills, to assign said lease to whomsoever they please, and that complainant has no equity to interfere." The question in this case is, what is the responsibility of the assignees of the lease to the lessor, and how long does that responsibility exist? There is no doubt that the lessee, being a party to the original contract, continues always liable thereon, notwithstanding any assignment he may make. Eaton v. Jaques, 2 Doug. 463; Tayl. Landl. & Ten. § 438. But an assignee by the assignment is put in privity of the estate of the lessor, but not in privity of contract. Childs v. Clark, 49 Am. Dec. 164. For this reason all the authorities hold that the assignee is responsible for the rent only so long as he remains in possession of the property, and they also hold that, in the absence of fraud, he can assign the lease at any time during his possession, and assume no responsibility for the payment of rent by his assignee. It is thus stated by Fields, C. J., in Johnson v. Sherman, 76 Am. Dec. 481:

"The assignee of a lease may discharge himself from liability for subsequent breaches of the covenants thereof by assigning over to a beggar, to a married woman, to a prisoner, or to a person leaving the state, provided the

assignment be executed before his departure, even though it be made for the express purpose of avoiding his responsibility, and a premium be given as an inducement to accept the transfer."

A lessee remains liable on his express obligation, notwithstanding he may have assigned his lease. Wall v. Hinds, 4 Gray, 256; Smith v. Harrison, 42 Ohio St. 180. And the lessor may sue, at his election, either the lessee or the assignee, or may pursue his remedy against both at the same time, though, of course, with but one satisfaction. In such case the liability of the original lessee depends upon privity of contract, and continues during the whole term, while the liability of the assignee depends upon privity of estate, created by the assignment, and continues only during the time he holds legal title to the leasehold estate during the assignment. Tayl. Landl. & Ten. § 452; 1 Washb. Real Prop. 326, etc.; Thursby v. Plant, 1 Saund. 241b, note 6. The whole subject is discussed, and the law in relation thereto distinctly declared, in Onslow v. Corrie, 2 Madd. 340. That was a case in equity, and in the discussion of the case the court says:

"Why is the assignee liable to the landlord? Because of the privity of estate. The original lessee is liable in respect of the privity of contract. The liability of the assignee of a lease begins and ends with his character of assignee. In him there is no personal confidence by the lessor." "An assignee may, whenever he pleases, assign again, and the moment he divests himself of the character of assignee he also shakes off his liability for rent. * * *"

Equity, however, gives relief to a landlord for his rent in cases of assignment—First, where the assignment is merely colorable and fictitious, the possession remaining with the assignor; or, secondly, though there be a real assignment, yet it has been made for the purpose of depriving the landlord of his legal remedies for rent due, or breaches of covenant incurred previous to the assignment. It will be observed that these cases, and, indeed, all the cases on the subject, including those quoted in the exhaustive argument of the defendants, speak of the liability of the assignees of a lease in any form. Counsel for defendants claim that the cases turn upon the form of action, whether in debt or covenant. But a close examination of the cases will show that this distinction exists only in the case of the lessee. If the lessor sue him in debt, he can plead assignment by consent of lessor; if the suit be in covenant, he cannot excuse himself by such a plea. This seems to be the settled law. Wood, Landl. & Ten. § 304; Id. p. 552, note 6. In the present case, Hammett and his associates lawfully received the assignment of the lease from the lessee, who, as we have seen, had the perfect right to assign it, there being nothing in the lease forbidding such assignment. During their possession under this assignment they came into privity of estate with the lessor, and were bound to pay all the rent which accrued or may accrue during their possession under the lease. But this lease is their property, and it is clothed with all the incidents of property, one of which is the right to dispose of it. They, therefore, under every principle of law, have the right to assign it. We have seen that under such an assignment they assume no responsibility for their

assignee, and that their responsibility for the future rent will cease with their assignment of the lease. Of course, their responsibility for any rent past due and unpaid will continue. If this assignment be not bona fide, and be merely colorable,—that is to say, if it be made for the purpose of avoiding responsibility for rent already accrued, or to evade the performance of covenants they were bound, during their tenure, to perform, or if their assignee is simply a man of straw, who will hold for them,—then an assignment, made under such circumstances, would not free them from the responsibility.

It is contended that at the auction sale, at which Hammett and his associates became the assignees of the lease, the agent of the lessor gave public notice that the purchasers of this lease would be held to the same responsibility as was then upon the lessee. But this announcement could not affect the legal rights of any purchaser at this sale. The lessee was not selling under any permission given it by the lessor. The consent of the lessor was in no wise necessary to the sale, and therefore he could not impose any conditions which would in any way bind the purchaser. The prayer of the bill is for an injunction against any assignment of the lease by Hammett and his associates. It is very clear that no injunction as broad in its terms as this can be granted. He also prays that they may be enjoined from assigning to the Camperdown Cotton Mills, an insolvent corporation, in the hands of a receiver, and practically defunct. The power of the receiver, and the extent of his control over the property of the corporation of which he is appointed, are measured by the terms of the order appointing him. In the present case it appears that James L. Orr, Esq., in the case of Sampson and others against the Camperdown Cotton Mills, was appointed receiver of all and singular the property and effects of the defendant corporation. If, therefore, as was contended by the counsel for the defendants at the hearing, the Camperdown Cotton Mills have an equity to require the assignment of this lease to it, that equity inures to the receiver. And the perfecting this equity by a legal assignment would require that such assignment be made to the receiver, and in such case the lease would be held for the benefit of the creditors of the Camperdown Mills. If, however, the Camperdown Cotton Mills never acquired such an equity, and if the entire property in the lease remains in Hammett and his associates, under the trend of the authorities above referred to, they could assign to the Camperdown Cotton Mills, even though it be insolvent. The existence of the Camperdown Cotton Mills as a corporation has not been destroyed by the appointment of a receiver. It does not hold its franchise at the will of this court, nor subject to the control of this court. Nothing can deprive it of its franchise except a forfeiture thereof, enforced by the state of South Carolina, from whom it is derived, or by the voluntary surrender of the franchise on the part of the corporation.

There is another view to be taken of this case. This court, sitting as a court of equity, is asked to make use of the extraordinary remedy of an injunction to prevent the assignment of this lease. If, as the complainant insists, Hammett and his associates have no

right to assign the lease, then the injunction is unnecessary. If they have no right to free themselves from responsibility by such an assignment, and if in fact that responsibility will remain, notwithstanding an assignment, or an attempt to make an assignment, or the assignment proposed, then the complainant has a plain, adequate, and complete remedy at law against them, and he does not need, and cannot entitle himself to, the aid of this court.

The restraining order heretofore granted is rescinded. The prayer for the injunction is refused. The bill is dismissed, with costs.

PENNSYLVANIA CO. FOR INSURANCE ON LIVES AND GRANTING ANNUITIES v. JACKSONVILLE, T. & K. W. RY. CO. et al.

JACKSONVILLE, T. & K. W. RY. CO. v. AMERICAN CONST. CO. et al.

(Circuit Court of Appeals, Fifth Circuit. February 5, 1895.)

Nos. 325 and 331.

1. COSTS IN RECEIVERSHIP PROCEEDINGS—APPORTIONMENT.
   A subordinate railroad was taken into the hands of a receiver appointed for the controlling company engaged in operating it, and, after being operated for some time by the receiver, was surrendered to its own company. *Held*, that the property so surrendered was liable for its due proportion of the costs of the receivership accruing while it was in the receiver's hands, although the company owning it never became a party to the proceedings until it appeared for the purpose of contesting such liability; and that the apportionment of such cost was a matter resting in the sound discretion of the circuit court.

2. COSTS IN EQUITY—DISCRETION OF CHANCELLOR.
   The matter of costs lies largely in the discretion of the chancellor, and a decree made by him, reviewing the action of the clerk determining what papers should be formally filed, and the manner of filing, will not be revised on appeal.

Appeal from the Circuit Court of the United States for the Northern District of Florida.

These were appeals taken respectively by the Pennsylvania Company for Insurance on Lives and Granting Annuities against the Jacksonville, Tampa & Key West Railway Company and others, and by the latter company against the American Construction Company, Philip Walters, and others, from a decree adjudicating the matter of costs arising in receivership proceedings.

J. C. Cooper and T. M. Day, for Jacksonville, T. & K. W. Ry. Co.

J. C. Cooper and R. H. Liggett, for Pennsylvania Co. for Insurance on Lives and Granting Annuities.

R. W. Davis, for Florida Southern R. Co.

Before McCORMICK, Circuit Judge, and BRUCE, District Judge.

PER CURIAM. These cases are substantially one, and were heard as such in this court. The subject of the contention is the clerk's costs in a suit in equity in which the railroad and other property of the Jacksonville, Tampa & Key West Railway Company and of the Florida Southern Railroad Company was in the actual