JEWETT v. WHITCOMB et al.

(Circuit Court, E. D. Wisconsin. July 30, 1895.)

REMOVAL OF CAUSES—SUITS AGAINST RECEIVERS OF FEDERAL COURTS.

A suit against a receiver appointed by a federal court for a cause arising out of his management of the property committed to his charge is one arising under the laws of the United States, and may be removed from a state to a federal court, without regard to the citizenship of the parties or the nature of the controversy.

This was an action by Jennie M. Jewett, as administratrix, against H. F. Whitcomb and Howard Morris, as receivers of the Wisconsin Central Company and the Wisconsin Central Railroad Company, to recover damages for the death of the plaintiff's intestate.

Hooper & Hooper, for plaintiff.
Thomas H. Gill, for defendants.

SEAMAN, District Judge. This action was commenced in the circuit court for Winnebago county upon a complaint which alleges that negligence on the part of the defendants in the operation of the railway committed to their control produced the death of plaintiff's intestate, and that the control and possession of such railway by the defendants was derived through their appointment as "receivers of the Wisconsin Central Company and the Wisconsin Central Railroad Company [they being railroad corporations organized and existing under the laws of the state of Wisconsin] by the circuit court of the United States for the Eastern district of Wisconsin in an action then pending in said court." Upon petition of the receivers, duly presented, the cause was removed to this court and docketed. The plaintiff now moves to remand, and, as diverse citizenship of the parties does not exist, the question arises whether the fact that the defendants were appointed receivers by a federal court, taken with the further fact that their liability is charged solely in that capacity, confers a right of removal to federal jurisdiction.

In Railway Co. v. Cox, 145 U. S. 593, 603, 12 Sup. Ct. 905, the unanimous opinion of the supreme court is expressed, through the chief justice, in respect of a similar action against receivers so appointed, in the following language:

"As jurisdiction without leave is maintainable through the act of congress, and as the receivers became such by reason of, and derived their authority from, and operated the road in obedience to, the orders of the circuit court, in the exercise of its judicial powers, we hold that jurisdiction existed because the suit was one arising under the constitution and laws of the United States; and this is in harmony with previous decisions. Buck v. Colbath, 3 Wall. 334; Feibelman v. Packard, 109 U. S. 421, 3 Sup. Ct. 289; Bock v. Perkins, 139 U. S. 628, 11 Sup. Ct. 677."

While it is true that in that case the receivership was over the property of a company incorporated by congress, the decision is expressly placed upon the broad ground that the receivers were acting under appointment by the federal court, and the precedents

cited are only applicable to that view. That it was so understood and intended by the court appears in Tennessee v. Bank of Commerce, 152 U. S. 454, 463, 472, 14 Sup. Ct. 654, where an interpretation is given in each of the opinions. Mr. Justice Gray, in the opinion of the court, referring to Railway Co. v. Cox, says:

"This court, speaking by the chief justice, after observing that the corporation would have been entitled, under the act of 1875, to remove a suit brought against it in a state court, maintained the jurisdiction of the circuit court of the United States of the action against the receivers, under the act of 1887, upon the ground that the right to sue, without the leave of the court which appointed them, receivers appointed by a court of the United States, was conferred by section 6 of that act, and therefore the suit was one arising under the constitution and laws of the United States."

And Mr. Justice Harlan, in the dissenting opinion, states as the ruling in that case:

"Without reference to the citizenship of the plaintiff, a suit for damages can be brought in a circuit court of the United States against receivers appointed by a circuit court of the United States of a railroad corporation created by an act of congress, although the case involves no question of a federal nature. This upon the ground that the receivers, in executing their duties, were acting under judicial authority derived from the constitution of the United States. Such a suit, if brought in a state court, could, I take it, be removed, under the present decision, upon the ground simply that the plaintiff's suit was within the original cognizance of the circuit court."

Again, in McNulta v. Lochridge, 141 U. S. 327, 331, 12 Sup. Ct. 11, it is held that the supreme court has jurisdiction to review the final judgment of a state court against the receiver for an injury arising out of alleged negligence in operating a railroad under the receivership, because he "was exercising an authority as receiver under an order of the federal court," and it was immaterial whether his claim of error "be founded upon the statute or upon principles of general jurisprudence"; that "this is a legitimate deduction from the opinion of this court in Buck v. Colbath, 3 Wall. 334," and other kindred citations.

The doctrine pronounced by these opinions, and their application of the precedents cited, must rule this case. The defendants are sued, as receivers appointed by a United States court, for the conduct of those engaged in the operation of the railroad in the hands of the court, committed to their charge as its officers, and subject to its exclusive direction and control. The liability with which they are charged is one arising wholly out of their management of the property intrusted to them, and is incurred through their appointment to and acceptance of the trust. Federal cognizance is conferred by these conditions, irrespective of any question of citizenship or of a nature peculiar to that jurisdiction, and the right of removal thereto follows as of course. This is the view held in Central Trust Co. of New York v. East Tennessee, V. & G. Ry. Co., 59 Fed. 523; Hurst v. Cobb, 61 Fed. 1; and Grant v. Bank, 47 Fed. 673. The motion to remand must be denied.

WHEELER BLISS MANUF'G CO. v. PICKHAM.

(Circuit Court, N. D. Illinois. July 27, 1895.)

CIRCUIT COURT—JURISDICTION—AMOUNT IN CONTROVERSY.

Where a plaintiff sues in good faith for the contract price of goods sold and delivered, amounting to over $2,000, and obtains a verdict for less than that sum because the defendant proves a set-off, of the exact amount of which the plaintiff had no notice before the trial, the court is not deprived of jurisdiction, although plaintiff's counsel admits, after the evidence is all in, that the recovery must be for less than $2,000.

Assumpsit by the Wheeler Bliss Manufacturing Company against Thomas Pickham. Plaintiff obtained a verdict. Defendant moves for a new trial.

Flower, Smith & Musgrave, for plaintiff.
O'Shea & Maloney, for defendant.

SEAMAN, District Judge. The defendant moves for a new trial upon a question of jurisdiction, which was raised at the last moment before submitting the cause to the jury, but of which final consideration was reserved for this motion. The contention is that it appeared upon the trial that the suit did not "really and substantially involve a dispute or controversy" over an amount exceeding $2,000; that because the uncontradicted testimony limited the best possible recovery of the plaintiff to a sum less than that amount, and especially because it was so admitted by its counsel in his argument to the jury, the plaintiff was concluded against its assertion of a claim in excess, and the court was deprived of jurisdiction by the terms of section 5 of the act of March 3, 1875 (18 Stat. 470, c. 137). The declaration was for goods sold and delivered at the contract price, alleged and proved to be $2,610, all due and unpaid. There was vigorous contest by the defendant against any liability under the contract; and, as further matter of defense, it was shown that the authorized agent of the plaintiff, for the purpose of terminating the executory contract of sale between the parties, agreed to an allowance or deduction upon the account against the defendant of one dollar each for "indicators" (being the subject of sale) which then remained on his hands. The plaintiff did not dispute this promise when the testimony came in, but it is my recollection that the evidence was received against its objection as inadmissible on the ground that it was only a proposal for settlement, which was not accepted, and therefore not operative; and it was clearly insisted on its behalf that the number of these indicators on hand was not ascertained or stated at the time, and that they were supposed by its agent not to exceed 400; that the first and only definite information plaintiff had of the amount was obtained through the testimony at the trial. Having no proof with which to oppose the defendant's testimony that there were 635 of these indicators on hand, and being overruled in his objections to the admissibility of this offer, counsel for plaintiff frankly stated to the jury that the deduction should be made by them in