

HOME & FOREIGN INVESTMENT & AGENCY CO., Limited, v. RAY.

(Circuit Court, N. D. Georgia. June 26, 1895.)

JURISDICTION OF CIRCUIT COURT—JURISDICTIONAL AMOUNT.

Suit was brought to enforce a mortgage securing a bond for \$2,000 and two annual interest coupons which had been severed therefrom. The bond itself was not yet due from lapse of time, but, by its terms, became due on the nonpayment of one interest coupon. *Held*, that the coupons could not be considered as separate obligations for the purpose of making up the jurisdictional amount, and, at the same time, be regarded as interest for the purpose of maturing the bond; and that, consequently, the court was without jurisdiction.

This was a bill by the Home & Foreign Investment & Agency Company, Limited, against Lavender R. Ray, to foreclose a mortgage securing a bond with interest coupons.

Payne & Fye, for complainant.
Lavender R. Ray, pro se.

NEWMAN, District Judge. The question in this case is one of jurisdiction, by reason of the amount involved in the suit. It is a bill to foreclose a mortgage securing a bond for \$2,000, and two past-due annual interest coupons for \$160 each, besides interest on the coupons from maturity. The coupons have been clipped from the bonds for the purpose of leaving them in bank for collection. Suit is brought on them now, however, in connection with the bond, as to which they represent two years' interest.

The defendant, a member of the bar, himself, rather as *amicus curiæ*, suggested to the court the question of jurisdiction, stating that there was no defense to the case, and that he desired to put in no appearance, except to bring the matter of jurisdiction to the attention of the court. The simple and sole contention for complainant is that the clipping of the coupons from the bond makes them separate obligations, and authorizes the court to consider them in making up the jurisdictional amount. The bond itself is not due. It becomes due by its terms on the nonpayment of one interest coupon. For the purpose, therefore, of making the debt due, these coupons must be considered as interest past due and unpaid on the bond. The coupons cannot be considered as interest for the purpose of maturing the debt, and as separate, distinct obligations for the purpose of giving this court jurisdiction. It is not believed that the fact, suggested in argument, that, if these coupons amounted to over \$2,000, suit could be brought on them alone, affects the question in any way. Suit on them here is in connection with the bond on which they are interest, and as, under the terms of the acts of 1887 and 1888, the amount involved must be \$2,000, exclusive of interest and costs, it is not believed that the suit in this case is for the necessary jurisdictional amount.

Cited for complainant as to separate obligations: *Bernheim v. Birnbaum*, 30 Fed. 885; *Walnut v. Wade*, 103 U. S. 696; *Granniss v. Cherokee Tp. of York Co.*, 47 Fed. 429; *Moore v. Town Council*

of Edgefield, 32 Fed. 501; Peeler's Adm'x v. Lathrop, 1 C. C. A. 93, 48 Fed. 786. As to coupons, and effect of same, see, also, Howard v. Bates Co., 43 Fed. 277.

CENTRAL TRUST CO. OF NEW YORK v. EAST TENNESSEE, V. & G. RY. CO. (SIMMONS et al., Interveners).

(Circuit Court, N. D. Georgia. June 28, 1895.)

No. 507.

1. JURISDICTION OF FEDERAL COURTS—RAILROAD FORECLOSURES—ANCILLARY SUITS.

Proceedings were instituted in the circuit court for the Eastern district of Tennessee to foreclose a railroad mortgage, and a foreclosure decree was rendered which provided that the fund arising from the sale should, among other things, be applied to such claims "as are decreed by the court to be prior in lien or equity to the lien of said mortgage." Ancillary proceedings were had in the circuit court for the Northern district of Georgia, and that court rendered a decree ratifying and adopting the foreclosure decree rendered in Tennessee, but with a provision reserving to itself the right to "determine what amount of the purchase price of the property sold shall be paid into this court" for payment of costs, "and such other claims filed in this cause in this court as may be allowed, and adjudged prior in lien to the mortgage," etc. In a subsequent decree of the court in Georgia, confirming the sale, a provision was inserted which stated that the question of distribution of the funds, the priority of liens, payment of costs, etc., were reserved for future action "by this court." *Held*, that in view of these provisions the court in Georgia would assume jurisdiction to determine the question as to the priority of claims filed therein on judgments recovered in Georgia over the lien of the mortgage bonds, and would not remit such questions to the court in Tennessee. *Central Trust Co. of New York v. East Tennessee, V. & G. Ry. Co.*, 30 Fed. 895, distinguished.

2. RAILROAD COMPANIES—BONDS AND MORTGAGES—TENNESSEE STATUTES.

The Tennessee statute of 1873, "to authorize certain railroad companies in Tennessee to issue consolidated or income bonds" and secure the same by mortgage, is a special statute, limited to a particular class of railroads and securities, and does not apply to mortgages executed by the East Tennessee, Virginia & Georgia Railroad Company, which was incorporated under the act of 1877 (Code, § 1271).

3. SAME.

The Tennessee statute of 1877 (Code, § 1271), providing that no railroad company shall have power to create any mortgage which shall be valid against judgments and decrees for timber furnished, work and labor done, or damages done to persons or property, is limited by its express terms to judgments obtained on causes of action arising within the state.

4. SAME.

Where a mortgage executed by a Tennessee railroad corporation, whose road extends into Georgia, is in course of foreclosure, and ancillary proceedings are had in the federal circuit court in Georgia, the question as to the priority of judgments filed in that court, and recovered in Georgia, on causes of action there arising, over the lien of the mortgage, must be determined by the laws of Georgia, and not by the laws of Tennessee.

5. SAME—PRIORITY OF LIENS—JUDGMENTS AND MORTGAGES.

Under the laws of Georgia, the lien of judgments recovered in that state, on causes of action arising therein, against a railroad company, is subordinate to the lien of a mortgage filed in the state prior to the time the causes of action arose.