CASES

ARGUED AND DETERMINED

IN THE

UNITED STATES CIRCUIT COURTS OF APPEALS AND THE CIRCUIT AND DISTRICT COURTS.

WATSON v. ASBURY PARK & B. ST. RY. CO. et al.

(Circuit Court, D. New Jersey. March 19, 1896.)

REMOVAL OF CAUSES—SEPARABLE CONTROVERSY.

One W., a citizen of New Jersey, brought a suit in a court of that state against a railway company incorporated by that state, and against its officers and directors, to have the railway company declared insolvent, and a receiver appointed, under a state statute. About the same time one V., a citizen of New York, and trustee under a mortgage of the railroad, took possession of the road under the provisions of the mortgage. Thereupon he was made a party to the suit brought by W., and removed the cause to the federal court, on the ground that there was a separable controversy between complainant and himself. Complainant moved to remand. *Held*, that there was no such separable controversy, and that the suit should be remanded.

W. H. Vredenburgh, John E. Lanning, and Acton C. Hartshorne, for the motion.

Arthur Dudley Vinton and W. B. Guild, opposed.

GREEN, District Judge. This suit was originally begun in the court of chancery of the state of New Jersey. Its object, among others, was to have the Asbury Park & Belmar Street-Railway Company decreed to be an insolvent corporation, and to have appointed therefor a receiver, under the provisions of the act of the state of New Jersey concerning insolvent corporations. As was necessary, the railway company and its officers and directors were made parties defendant to the suit. The railway company is a corporation of the state of New Jersey, and the other original defendants, as well as the complainant, are also citizens of New Jersey. About the time of the filing of this bill of complaint, one Adrian Vanderveer, who is the trustee for certain bondholders of the railway company, under an indenture of mortgage made by the company to secure the said bonds, pursuant to its terms and conditions, entered upon and took possession of all the mortgaged premises and property, and is now in actual possession thereof, and is operating the railway. Upon learning of this the complainant obtained leave to amend the bill

of complaint by making Mr. Vanderveer a party defendant. And Mr. Vanderveer, in response to a formal notice, caused his appearance in the action to be entered. No amendment was made to the prayer of the bill for relief, and the only part of the pending controversy which can possibly affect Mr. Vanderveer, as trustee, is that which seeks a decree of insolvency against the railway company, and the appointment of a receiver. Mr. Vanderveer is a citizen of New York, and, under the third clause of the second section of the removal act of 1887, has removed the cause from the court of chancery of New Jersey to this court. A motion is now made on behalf of the complainant to remand the cause to that court. The justification for the removal of a cause from a state to a federal court under this section of the removal act is found solely in the fact that in the cause there exists a controversy separable in its nature from other controversies involved, which is wholly between citizens of different states, and which can be fully determined as between them. This presupposes that there must be more than one controversy in the same suit, one of which is between the complainant and the defendant, only, who seeks to remove, and who is a citizen of a state other than the one in which the suit is brought, and that to the final determination of that separate controversy the other defendants are not necessary parties. Barney v. Latham, 103 U. S. 205. Or, as was said by the supreme court in Fraser v. Jennison, 106 U. S. 191, 1 Sup. Ct. 171, "to entitle a party to removal under this clause, there must exist in the suit a separate and distinct cause of action, on which a separate and distinct suit might properly have been brought, and complete relief afforded as to such cause of action, with all the parties on one side of that controversy citizens of different states from those on the other." Applying this test, it is clear that this cause has been improperly removed. Mr. Vanderveer, at whose instance the removal was made, is solely interested in the question of the actual possession of the mortgaged premises. A receiver has been asked for by the complainant, and if that prayer be granted the possession of the trustee may be threatened. But to such an application for a receiver the railroad company is a necessary party. No decree for a receiver, as against that company, could be made by this or any other court without its presence in court. Such decree in this cause depends largely, if not entirely, on the alleged insolvency of the railway company, and upon that issue the company is entitled to be heard. Otherwise the proceedings would be open to the objection that the company had been deprived of its property and rights without due process of law. It is apparent, therefore, that this controversy, in which Mr. Vanderveer is interested, likewise deeply and necessarily concerns the railroad company, and it must be a party to its final determination. But the railway company is a citizen of New Jersey, and its antagonist, the complainant, is, as well, a citizen of New Jersey. Hence all the parties on one side of the controversy are not citizens of different states from those on the other, and it is apparent that the state of facts has not arisen which is contemplated by the statute as justifying a removal. Let the cause be remanded.

CROSS et al. v. EVANS.

(Circuit Court of Appeals, Fifth Circuit. May 4, 1895.)

No. 15,891.

1. REMOVAL OF CAUSES—DIVERSE CITIZENSHIP—NEW PARTIES.
An action brought in a state court, against federal railroad receivers, to recover damages for personal injuries occasioned while they were operating the road, was removed by them to the circuit court for the Eastern district of Texas, on the ground of diverse citizenship. Thereafter, by order of the appointing court, the railroad property was transferred by the receivers to a new corporation organized under the laws of Texas, the court reserving jurisdiction over the litigation for the purpose of enforcing existing claims against the receivers and the railroad property. The plaintiffs then, by amended pleadings, made the Texas corporation a party defendant. Quære: Whether, on these facts, the Texas corporation was properly made a party defendant. (Question certified to supreme court.)

2. SAME—JURISDICTION OF FEDERAL COURT.
Quære: Whether, under such circumstances, the federal court for the Eastern district of Texas had jurisdiction and authority to try and determine the issues arising on the record between the plaintiff and the said Texas corporation, and give judgment accordingly. (Question certified to supreme court.)

3. JURISDICTION OF CIRCUIT COURT OF APPEALS—REVERSAL OF JUDGMENT.
Quære: Whether, in case said corporation was improperly made a party, and in case the said court had no jurisdiction to try such issues,—it having nevertheless rendered a judgment for money damages against the Texas corporation, and discharging the receiver from responsibility,—the circuit court of appeals would have jurisdiction and authority, on a writ of error sued out jointly by the receivers and the Texas corporation, to reverse such judgment in toto, and direct a dismissal of the case as against such corporation, and award a new trial against the receivers. (Question certified to supreme court.)

4. SAME.
Quære: Whether, in the case last above stated, if the circuit court of appeals is without such jurisdiction and authority, it would yet have authority to reverse the judgment and remand the cause, with instructions to remand the whole cause to the state court, from which it was removed.

Error to the Circuit Court of the United States for the Eastern District of Texas.

Certificate of questions upon which the decision of the supreme court of the United States is desired by the circuit court of appeals.

Before PARDEE and McCORMICK, Circuit Judges, and TOULMIN, District Judge.

PER CURIAM. This cause came on to be heard on the transcript of record, showing the following:

The suit was filed originally in the district court of Wood county, Tex., on the 5th day of March, 1891, against George A. Eddy and H. C. Cross, receivers of the Missouri, Kansas & Texas Railway, by J. M. Evans, to recover damages on account of personal injuries alleged to have been inflicted on him on the 1st day of September, 1890, while said Cross and Eddy were operating said railway as receivers,