

not involve the power under which they act, which is, as we have seen, the laws of the United States. So every action against them jointly with another must be a suit arising under federal law. No joint recovery can be had, no joint suit can be prosecuted, which does not reach all the defendants. To reach the Union Pacific Railway Company and the receivers in this case it is necessary to involve the laws whence they derive their power. Since this suit against the receivers and the Union Pacific Railway Company necessarily involves the federal law, it is clear that this case arises under federal law. A suit against the Rock Island Company could be maintained without reference to the federal laws. But when it is sought to hold jointly with this company the Union Pacific Company and its receivers, then a new character is given the action, a new element is introduced, to wit, the laws of the United States. Therefore, as it is necessary, in order to maintain this action against the defendants jointly, to invoke federal law, the case is one arising under the laws of the United States, and hence was removable under the statute.

In the case of *Landers v. Felton*, 73 Fed. 311, it is said:

"The question here arises whether an action brought against the receiver of a United States court and others, who are citizens of the same state as that of the plaintiff, to establish a joint liability of all the defendants, is a suit arising under the laws and constitution of the United States. I do not see how it can be otherwise. No separate liability could be asserted against the receiver, as receiver, except under the laws of the United States. If no separate liability could be asserted against him, except by virtue of those laws, certainly no joint liability with another can be asserted against him, except by virtue of the same laws. Therefore the joint liability of the defendants with the receiver arises under the laws and constitution of the United States. If the plaintiff wished to sue the other defendants without joining the receiver, he had his election to do so, because the liability of joint tortfeasors is also several. He might, therefore, have maintained his action against the resident defendants in a state court, without any possibility of a removal to a federal court. He elected, however, to join the resident defendants with a person against whom he could establish no liability, in the capacity in which he sues him, except by virtue of the laws of the United States. Therefore the joint cause of action which he asserts against all the defendants must find its sanction in the federal statutes. Hence the cause of action is removable."

The motion to remand is overruled.

BRADLEY v. OHIO R. & C. RY. CO.

(Circuit Court, W. D. North Carolina. December 17, 1896.)

REMOVAL OF CAUSES — CITIZENSHIP OF CORPORATIONS — CHARTERS FROM DIFFERENT STATES.

In 1885 the legislature of South Carolina, by an amendatory act, recognized the corporation of the G. Ry. Co., and gave it the name of the C. Ry. Co. In 1886 the C. Ry. Co. consolidated with two North Carolina railroad corporations, under its name of the C. Ry. Co.; and such consolidation was ratified by the North Carolina legislature by an act of February, 1887, which also conferred important franchises, within North Carolina, on the corporation. The C. Ry. Co., as thus organized, also had charters from South Carolina, Tennessee, and Kentucky, and was authorized to build a railroad passing through the four states. A mortgage upon its road was foreclosed, the whole road sold, and bought by one H. After taking possession, H. executed and filed

a declaration, under sections 697, 698, and 2005 of the North Carolina Code, for the purpose of constituting a new corporation to succeed to the rights and property bought by him, to which he gave the name of the O. Ry. Co. of North Carolina, and to which he conveyed the railroad property within that state. H. afterwards obtained charters in Virginia and South Carolina for the O. Ry. Co., and conveyed to it the railroad property and franchises purchased by him. *Held*, that the corporation operating the railroad in North Carolina could not found any claim to be considered a citizen and resident of South Carolina on any relation it had with the C. Ry. Co., nor on the obtaining of charters from South Carolina and Virginia, and conveyance of the property by H., but that it was a domestic corporation of North Carolina, and, as such, not entitled to remove to a federal court, on the ground of local prejudice, a suit brought against it in a court of that state.

A Motion to Remand to the State Court.

E. J. Justice, for plaintiff.

P. J. Sinclair and H. N. Hardin, for defendant.

DICK, District Judge. This action was instituted in the state court for the county of McDowell to recover damages for personal injuries occurring in this state; and the defendant availed itself of the right given by the act of congress of the 13th of August, 1888, to nonresident defendants, to remove an action pending in a state court to the United States circuit court on the grounds of local prejudice, etc. The application was received and considered, and this court adjudged that local prejudice did exist in said county, as alleged and proved by evidence; and an order was made for the removal of this case from the state court to this court at Charlotte. In the said order, leave was granted to plaintiff to file a motion to remand at the next term of this court; and such motion was duly made, and is now before this court for determination. This order was not recognized and observed by the state court, which declined to relinquish jurisdiction, on the grounds insisted upon by the plaintiff: "(1) That the Ohio River & Charleston Railroad Company is a corporation and citizen of North Carolina; (2) that this fact also appears in the record and pleadings." From this order in the state court the defendant prayed an appeal, which was allowed, and the clerk was directed to send up a full transcript of the record, and all the papers filed in the case. On a hearing in the supreme court in the term just closed, the court affirmed the order of the court below, not upon the grounds stated in the order appealed from, although fully presented in the record, briefs, and argument before the court, but upon a defect that appeared in the proceedings of this court for the removal of the cause. 26 S. E. 169. I concur in this decision of the supreme court, founded upon the fact that "it does not affirmatively appear, either in the petition, or in the order of removal, or anywhere else in the record, that the diverse citizenship of the parties existed also at the time of the commencement of the action." This decision is not important, if the substantial grounds set forth in the order of the state court are not well founded; for, as the case was properly retained, and is still pending, in the state court, and this court acquired no jurisdiction, by reason of its defective proceedings, the defect mentioned could be reme-

died by the defendant filing a new petition, alleging the facts omitted by inadvertence, and obtaining a correct and legal order of removal; for common justice would require that the defendant should not be deprived of a substantial legal right by the nonobservance of his counsel and the court of a matter that is, to some extent, often refined and technical.

The material question of law for this court to decide on the pending motion to remand is whether the defendant is a foreign or domestic corporation, before allowing a new petition to be filed. It is insisted on the part of the plaintiff that defendant is a domestic corporation, for the purposes of this action, because in its answer it did not specifically answer to a positive allegation in the complaint that "it is a corporation incorporated under the laws of North Carolina, owning and operating a railway and doing business in said state as a common carrier of passengers and freight," etc. To this allegation the defendant made answer that it "has not sufficient knowledge or information to deny or admit this allegation of the complaint, and denies the same." This court is of opinion that this general denial by the defendant of the allegation of its legal existence as a domestic corporation is sufficient, and the only matters of fact admitted were due service of process, and that it was an organized association acting as a corporation within this state. The plaintiff, on objection to this general denial of matter of law, as indefinite and uncertain, could not, on motion, have obtained an order on defendant to make the answer more specific as to the legality of its domestic corporate existence, for the allegation contains matter of law. Matters of law, or mere inferences of law, are questions to be judicially noticed and determined by the court, and such matters which are not proper subjects of traverse are not taken as admitted by pleading over. This matter of law was distinctly presented in the order of the state court appealed from, and was the material point in the case; and the fact that the state supreme court, after full argument of counsel, failed to make adjudication of the point, tends strongly to show that the court regarded the question of law as a matter of some difficulty and importance. A railroad corporation is an artificial person, created by positive law, and invested with franchises involving specific powers and privileges, conferring some of the attributes of sovereignty, to be exercised primarily for the benefits and advantages of the public. Such corporate franchises can never arise and be invested by any kind of implication. If the defendant is not a domestic, but a foreign, corporation, its failure in its answer to make specific denial of a direct and positive allegation of matters of law in the complaint did not estop it from claiming a right of removal of this case from the state court to this court under the provisions of the act of congress of the 13th of August, 1888.

The chief ground for the motion to remand—strongly insisted upon by counsel of plaintiff—is that the defendant, at the time of the injury sustained by plaintiff's intestate, was a domestic corporation, duly incorporated under the laws of the state of North Carolina, owning and operating a railway and doing business in said

state as a carrier of passengers and freight, etc., and, being in fact and in law such domestic corporation, it was not entitled, under the said act of congress, to the order of removal heretofore made by this court, which has not now jurisdiction to retain and dispose of this case. I have examined and considered this question of law with more than ordinary care, as the counsel of defendant, in their briefs and arguments, insisted that this court, in the case of *Hudson v. Railroad Co.*, decided "that, for jurisdictional purposes, the C., C. & C. R. R. Co. was a foreign corporation within the state of North Carolina, and was a citizen of South Carolina, and that the act of the general assembly of this state amounted only to a license, and did not create a new corporation." I have examined such case, reported in 55 Fed. 248, and find that the court decided that said railroad company was a citizen of South Carolina, and had a right of removal of the case from the state to the federal court. The question as to its citizenship in this state was not presented on the trial, as the injury sued for in the state court occurred in South Carolina. On a petition of plaintiff to have his judgment declared to be a lien on the property of the defendant under the laws of this state, I referred this question to the circuit court of South Carolina having original and prior jurisdiction of the subject-matter. *Ex parte Hudson*, 61 Fed. 369. Many motions were made in this court before the trial, and in some of them I may have expressed views as stated by counsel, and, according to my recollection, such were my impressions, but the question was not fully argued and decided. It now appears, from documentary proofs before this court, that the general assembly of South Carolina, by an amendatory act of December 22, 1885, recognized the pre-existing corporation of the Georgetown & North Carolina Narrow-Gauge Railroad Company, and gave it the name of the Charleston, Cincinnati & Chicago Railroad Company. Previous to this date there were existing in the state of North Carolina two duly chartered and organized domestic corporations, respectively known as the Rutherford Railway Construction Company and the Rutherfordton, Marion & Tennessee Railway. These domestic corporations were desirous of consolidating with and merging into the said Charleston, Cincinnati & Chicago Railroad Company so as to make a continuous line, and to extend the said road into and across the state of North Carolina, and to enable said road to be continued across the states of Tennessee, Virginia, and Kentucky to the Ohio river. In September, 1886, terms of consolidation were agreed upon by these respective railroad companies, which were duly approved, ratified, and confirmed by an act of the general assembly of North Carolina of the 17th of February, 1887 (Acts 1887, c. 77). By this act the Charleston, Cincinnati & Chicago Railroad Company was recognized and adopted as one corporation, with its consolidated organization, for the purposes of the general management of its property and conducting its business in the several states through which its railway should be constructed and operated. As it acquired the property and franchises of two domestic railway corporations of this state, and was also, in express terms, authorized and empowered

to have and exercise all the powers, privileges, and franchises to the extent conferred on the North Carolina Railroad Company and other railroads in the chapters of the State Code entitled "Corporations" and "Railroads," it became a domestic corporation, to be governed by the laws of this state as to its property and business situated and transacted therein; and it also became liable to answer for all acts done within such territorial limits as a domestic corporation. *Railway Co. v. Meeh*, 16 C. C. A. 510, 69 Fed. 753, and cases cited. This act was not a mere enabling act, granting a license to a foreign corporation to operate a railroad and transact other business in this state under chartered powers derived from the state of South Carolina; for this legislative grant conferred other important franchises, which were accepted and exercised in this state, in the construction and operation of its railway, to as full an extent as could have been done by a North Carolina corporation under the most liberal charters ever granted. *Clark v. Barnard*, 108 U. S. 436, 2 Sup. Ct. 878. This act expressly authorized this consolidated corporation to mortgage its road and property to secure its indebtedness. In order to carry on the contemplated plans and purposes of consolidation and extension of its railroad in and through the several states mentioned, this corporation on the 9th of August, 1887, executed a mortgage in the nature of a deed of trust, whereby it conveyed to the Boston Safe-Deposit & Trust Company all of its property and franchises, etc., to secure the payment of certain specified first mortgage bonds, and said mortgage was duly delivered and recorded in the manner required by the laws of the several states through which its railroad extended. This corporation having failed to make payment of interest on its bonds at the time and in the manner provided for in the mortgage, the whole debt secured became due and payable. The mortgagee, after reasonable indulgence, duly instituted proceedings in the United States circuit court in the district of South Carolina to obtain a decree for foreclosure and sale of the property and franchises conveyed as a security for the payment of the bonds mentioned in the mortgage; and on the 6th of February, 1893, a decree was made for the purpose of affording the relief prayed for by mortgagee. In this decree it was ordered, adjudged, and decreed "that the Charleston, Cincinnati & Chicago Railroad Company is a corporation organized and chartered by the states of North Carolina, South Carolina, Tennessee, and Kentucky for the purpose of constructing, owning, controlling, and operating a railroad," etc., and the special master appointed was authorized and directed to advertise the premises, property, and franchises of said company and make sale as provided in decree. This decree was also entered as a decree of the circuit court of this district in the ancillary proceedings which had been regularly instituted and conducted. By virtue of this decree the special master made sale on the 2d May, 1893, and executed a deed to the purchaser, Charles E. Hillier, of Boston, conveying to him all the property and franchises of the Charleston, Cincinnati & Chicago Railroad Company. The said Charles E. Hillier, after having been put in

possession of said property and franchises, determined to form a new corporation, in accordance with the laws of the state of North Carolina (1 Code N. C. §§ 697, 698, 2005). In compliance with these sections, on the 20th of June, 1894, he executed, under his hand and seal, a declaration constituting a new corporation, to be invested with all the rights, powers, privileges, and franchises of the Charleston, Cincinnati & Chicago Railroad Company in this state. For the purpose of effecting a complete working organization, he gave this new corporation the name of Ohio River & Charleston Railroad Company of North Carolina, appointed six directors, and designated the amount of capital stock, and the number of shares into which the capital stock should be divided, and caused a certificate of such organization to be duly filed in the several counties of North Carolina in which the said railroad was situated. On the 13th of November, 1894, the said Charles E. Hillier executed and delivered a deed to the Ohio River & Charleston Railway Company of North Carolina, conveying to said company so much of the property and the rights, privileges, and franchises of the Charleston, Cincinnati & Chicago Railroad Company as were conveyed to him, as purchaser, by the special master, which are situated in the state of North Carolina, or were derived from the laws of said state. The granting of the rights, privileges, and powers which constitute the franchises of a corporation are matters under the control of the legislature, and, within the limits of constitutional power, the legislature may adopt, by statute, any mode of conferring and investing such corporate franchises, or continuing the existence of those franchises previously granted, which had been acquired by a purchaser under execution sale, or under sale made by the decree of a court having authority by virtue of the laws of the state to order sales. Reasons of public policy require the continuance of railroads in a condition of useful and efficient operation, and statutes enacted for such beneficial purposes should be liberally construed in ascertaining the intention of the legislature for preserving the full accommodations and advantages arising to the public from such corporations. After careful consideration, I am of opinion that the said proceedings of Charles E. Hillier were regular, sufficiently specific, and in accordance with the laws of this state; that the former charter of the Charleston, Cincinnati & Chicago Railroad Company has been dissolved in accordance with state laws, and that said company no longer has corporate existence in this state; that the Ohio River & Charleston Railroad Company is a separate and independent domestic corporation, and has no other connection or relation with the dissolved Charleston, Cincinnati & Chicago Railroad Company, except it is legally invested with the property and franchises that formerly belonged to the said dissolved corporation. There can be no doubt as to the power of the legislature, under the present constitution of North Carolina, to repeal and dissolve railroad charters granted since the adoption of said constitution. *Railroad Co. v. Rollins*, 82 N. C. 523; *Young v. Rollins*, 85 N. C. 485; *Marshall v. Railroad Co.*, 92 N. C. 322. I have carefully examined and con-

sidered the cases cited by counsel of defendant, and have the opinion that the principles announced do not conflict with the legal views I have expressed in relation to the facts of the case before the court. I will cite only one case mentioned in briefs, as it refers to other cases relied upon by counsel of defendant: *Goodlett v. Railroad*, 122 U. S. 391, 7 Sup. Ct. 1254. I concur with counsel of defendant in their opinion that the legislature of this state has, in sections 1932 to 1934 of the Code, manifested a clear and positive intention that railroad corporations shall not be created by the action of associated persons otherwise than as provided in such sections. Those sections refer only to the mode and manner or creating railroad corporations, and not as to the methods of continuing the existence and operation of railroad franchises in the hands of purchasers at judicial sales. The property of railroads must be kept in association with their franchises, to preserve value, to give credit to such corporations, to secure creditors, and keep railroads in operation for the benefit of the public, which was the primary object of the legislature in bestowing such corporate franchises. Such legislative purpose is clearly manifested in the Code of North Carolina, in sections 697, 698, 2005, and other sections. *Gooch v. McGee*, 83 N. C. 59. The defendant, in its petition for removal, claimed to be a citizen and resident of the state of South Carolina. It could not found this claim upon any relation which it had to the Charleston, Cincinnati & Chicago Railroad Company, for all of the title, estate, interest, and equity of redemption of this company to the mortgaged premises, rights, property, assets, and franchises were barred and forever foreclosed by the decree for sale and foreclosure made in the circuit court, which was duly executed by the special master. In the briefs of counsel, residence and citizenship in South Carolina are founded upon the alleged facts that Charles E. Hillier, after his purchase, "obtained a charter by special act of the legislature of Virginia approved February 12, 1894, and filed certain articles of incorporation with the secretary of state of South Carolina, under the laws of said state; he, the said Hillier, having conveyed the property and franchises of his said railroad purchase to the Ohio River & Charleston Railway Company." Conceding these alleged facts to be fully established, I am of opinion that the foreign corporation organized under that act has never been recognized and adopted by the legislature of this state, and has not superseded or destroyed the domestic corporation organized by the said Hillier under the laws of this state, or absolved the Ohio River & Charleston Railway Company of North Carolina from the discharge of the functions, duties, obligations, and responsibilities which were assumed by its domestic organization. The said Hillier had no authority or power to dissolve such domestic corporation, or transfer its franchises and property, without the consent and approval of the legislature of North Carolina.

As the proceedings for removal of this case were defective and ineffectual, and the case is now rightfully pending in the state court, I cannot make an order to remand. It is therefore consid-

ered and ordered that the proceedings in this court for removal be dismissed, with costs to be taxed against the petitioner, the defendant in this case.

BAKER v. AULT et al.

(Circuit Court, D. Washington, N. D. February 5, 1897.)

FEDERAL COURTS — INJUNCTION AGAINST PROCEEDINGS IN STATE COURT — INSOLVENT NATIONAL BANKS.

When a valid judgment has been obtained in a state court against a national bank, and the lien thereof has attached to its property, before the appointment of a receiver, Rev. St. § 720, applies to prohibit the issue of an injunction by a federal court, at the suit of the receiver, to restrain the enforcement of such judgment.

Stratton, Lewis & Gilman, for complainant.

F. M. Headlee, for defendants.

HANFORD, District Judge. This is a suit for an injunction to restrain the defendants from proceeding to obtain satisfaction of a judgment in their favor against an insolvent national bank by a sale of real estate under a writ of execution. The judgment was rendered by the superior court of the state of Washington for Snohomish county, and became a lien upon real estate owned by the bank situated in said county, prior to the closing of the bank. The plaintiff, as receiver of said bank, claims the land as part of the assets in his custody as receiver, and that there will be a loss to the trust estate if the defendants are permitted to sell the property under an execution. Section 720, Revised Statutes of the United States, provides that:

"The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

This is a mandatory law, prohibiting the exercise by the federal courts of the power to issue injunctions to stay proceedings in any court of a state except in special cases, when authorized by some other law. I find it unnecessary to consider the other questions argued by counsel, for the reason that this statute is applicable to this case, and it must control the decision. Where a judgment has been obtained by fraud, or rendered by a court having no jurisdiction, a United States circuit court may exercise its power to restrain a party from taking any benefit from a judgment so obtained, or rendered in his favor. *Marshall v. Holmes*, 141 U. S. 589-601, 12 Sup. Ct. 62. But in the case at bar the validity of the judgment is not brought into question, and it is admitted that a judgment lien attached to the property before the receiver was appointed. I can find no ground for excepting this case from the rule prescribed by the statute. If the receiver wishes to save the property from being sacrificed by an execution sale, he must discharge the lien by satisfying the judgment, or else apply to the court which rendered the judgment to stay proceedings. Let there be a decree of dismissal, with costs.