FIRST NAT. BANK OF CEREDO et al. v. SOCIETY FOR SAVINGS et al.

(Circuit Court of Appeals, Fourth Circuit. May 14, 1897.)

No. 221.

1. JURISDICTION OF FEDERAL CIRCUIT COURTS — MANDAMUS TO LEVY TAX—INJUNCTION.
A federal circuit court issued a mandamus requiring the county court to levy a tax to pay a judgment against the county. Certain inhabitants of the town filed a bill in a state court to enjoin the levy on property in the town, claiming that such property was not subject to the claim upon which the judgment was based. This injunction suit was then removed by defendants to the federal court. *Held*, that the latter court had jurisdiction thereof, as it involved the enforcement of a judgment of a federal court acting under the federal laws and constitution.

2. COUNTIES — INVALID ROAD IMPROVEMENT BONDS — JUDGMENT FOR MONEY HAD AND RECEIVED—EXEMPTION OF TOWN PROPERTY.
A town charter exempted the inhabitants from county road taxes. Bonds issued and sold by the county for road improvements were subsequently declared invalid, but a judgment was rendered against the county as for money had and received, for the amount paid in by the purchasers of the bonds. To enforce this judgment, a mandamus was issued requiring the levy of a tax to pay the judgment, whereupon certain inhabitants of the town sought to enjoin the levy as to their property. *Held*, that the exemption in the charter did not avail owners of town property, as the judgment was against the whole county for money which it was bound to return to the judgment creditors.

Appeal from the Circuit Court of the United States for the District of West Virginia.

John H. Holt, for appellants.
Frank B. Enslow, for appellees.

Before GOFF and SIMONTON, Circuit Judges, and HUGHES, District Judge.

SIMONTON, Circuit Judge. This case comes up on appeal from the circuit court of the United States for the district of West Virginia. The bill was filed originally in the circuit court for Wayne county, state of West Virginia. The complainants are citizens and taxpayers of the town of Ceredo, situated in Wayne county, and the defendants are the Society for Savings, a corporation of the state of Ohio, the county court of Wayne county, and the sheriff of that county. The prayer of the bill is for an injunction against these defendants forbidding them from levying a tax upon the taxable property within the town of Ceredo, in obedience to the exigency of a writ of mandamus issued out of the circuit court of the United States for the district of West Virginia, and directed to the said county court, instructing it to levy a tax on the taxable property of the county for the purpose of paying a judgment of the federal court against the county.

The facts of the case are these: The town of Ceredo was incorporated by an act of the legislature of West Virginia passed the 23d of February, 1866. By the twenty-eighth section of this act it is declared that the said town and taxable persons and property therein

shall be exempt from all expense and liability for the construction or repair of roads or bridges within said county, but outside the corporate limits of said town, provided, however, that the said town shall keep its streets and alleys in good order, and provide for its own poor. This proviso has been fulfilled by the authorities of the said town from the date of the incorporation to this time. Between the years 1880 and 1884 the county court of Wayne county issued certain coupon bonds of the county for the purpose of constructing and repairing bridges and roads in the county. The whole issue was taken up by the Society for Savings, and the money therefor paid into the treasury of the county. The question of the issue of these bonds was never submitted to a vote of the people of the county, and their validity was attacked on that ground. The circuit court of the United States for the district of West Virginia, upon the case made, held that the bonds were illegal, null, and void; but the court further held that, inasmuch as the county received from the Society for Savings the money for the bonds ex æquo et bono, the society was entitled, at the hands of the county, to the return of the money as for money had and received. The case having been taken to the supreme court of the United States, this decision of the circuit court was affirmed by a divided court. Judgment was entered accordingly in the circuit court, and a mandamus was sued out directed to the county court to levy a tax on the taxable property of the county for the purpose of paying this judgment. The county court was proceeding to obey this mandamus, and thereupon the complainants filed their bill in the state court seeking an injunction against the levy upon so much of the taxable property of the county as was within the corporate limits of the town of Ceredo. They rely upon the exemption in the charter of the town above quoted. The cause having been removed into this court, they set up the same exemption, and they also deny the jurisdiction of the court.

As this second ground lies at the threshold it will be considered first. No motion to remand the cause has ever been made. This delay would defeat the right to remand in some instances. French v. Hay, 22 Wall. 244. But, as the objection goes to the jurisdiction of the court, it must be met and decided. The objection is that the complainants and the county court, as well as the sheriff of Wayne county, defendants, are all citizens of the state of West Virginia, and, there being no separable controversy, this court has no jurisdiction. But the proceeding is brought to enjoin a mandamus issued out of the circuit court of the United States. Mandamus is the remedy that court must adopt for the collection of a judgment against the municipal corporation. Riggs v. Johnson Co., 6 Wall. 166; Cass Co. v. Johnston, 95 U. S. 360; U. S. v. New Orleans, 98 U. S. 381; Smith v. Bourbon Co., 127 U. S. 105, 8 Sup. Ct. 1043. This proceeding is in the nature of an execution. The rights of the parties to the judgment in respect of its subject-matter are fixed by its rendition. City of Chanute v. Trader, 132 U. S. 210, 10 Sup. Ct. 67. This being so, the proceeding in the state court involves the enforcement of a judgment of the United States circuit court, acting under the constitution and laws of the United States, and it is, therefore, a question

arising under that constitution and those laws, and so within the jurisdiction of the federal court.

The other objection is this: The judgment is a liability created by the county court for the purpose of building and repairing the roads and bridges of the county outside the limits of the town of Ceredo, and from such liability the town is exempted by its charter. No mandamus to aid in the collection of the judgment against a municipal corporation can be limited in its mandate only by what the judgment itself declares. Harshman v. Knox Co., 122 U. S. 306, 7 Sup. Ct. 1171. The rights of the parties to the judgment in respect to the subject-matter are, as has been said, fixed by its rendition. City of Chanute v. Trader, supra. The judgment in the enforcement of which the mandamus operates as an execution is against the county of Wayne,—the whole county. The subject-matter of the judgment is money of the Society for Savings in the hands of the county, which, ex æquo et bono, does not belong to the county, but which the county must return to the Society for Savings. It is not money applicable to the construction and repair of roads and bridges. It is money not disposable by the county at all. The only connection the county has with it is the duty and obligation to return it. Under these circumstances, the exemptions in the charter of the town cannot avail to protect the town of Ceredo from its share in the liability of the county,—a liability adjudged against the county without qualification. It has been urged at the bar that this exemption in the charter of the town of Ceredo has been repealed by chapter 43 of the Code of West Virginia. On this point no opinion is expressed. Nor is any opinion expressed upon the right of the town of Ceredo in some other proceeding to adjust such equities as may exist between it and the remainder of the county. It is enough to say that on the case made here the complainants below (appellants here) are not entitled to the injunction prayed for. The decree of the circuit court is affirmed.

ERSKINE et al. v. FOREST OIL CO.

(Circuit Court, W. D. Pennsylvania. December 12, 1895.)

1. EQUITY JURISDICTION—BILL TO RECOVER OIL WELLS—LEGAL REMEDIES.
   In Pennsylvania, equity has no jurisdiction of a bill to restrain the operation of oil wells, or the taking of oil therefrom, where the complainant's title is purely legal, the respondent is solvent, and there are neither complicated accounts nor such irreparable injury as warrants interference by injunction. The substantial purpose of such a bill being to recover possession of the wells, the remedy by ejectment, aided by writ of estrepement under the state statutes, is full and adequate.

2. SAME—DISCOVERY.
   Discovery is not, ordinarily, an independent ground of equitable relief, and where a bill presents no other ground for interference equity will not take jurisdiction merely because discovery is prayed for.

Knox & Read and J. H. Beal, for complainants.
R. W. Cummins, for defendant.

BUFFINGTON, District Judge. On December 18, 1894, Eliza Erskine, a citizen of the state of Ohio. filed this bill in equity against the Forest Oil Company, a corporation of the state of Pennsylvania, setting forth, inter alia, that William Crawford died in 1846, and by his will bequeathed a certain farm in Washington county, Pa., to his son Matthew Crawford and to his children; that Matthew died on September 30, 1894, and the complainant was one of his 13 children; and that since his death the respondent company entered on said farm, and took possession of four producing oil wells, and of the oil since produced therefrom. The bill prayed first for an injunction to restrain respondent from entering on the premises, from interfering with the wells, from carrying away the oil or removing any machinery, tools, or fixtures from the premises. It also prayed for a receiver, for an account, discovery, and general relief. The contention of complainant is that by the will Matthew Crawford took an estate for life only, with remainder to his then and after born children. The answer alleged the will vested no estate whatever in the children, but did vest the fee in Matthew; that on the death of his father, Matthew accepted the devise, entered into and retained sole and exclusive possession of the farm until March 20, 1892, when the Woodland Oil Company entered thereon to operate for gas and oil, as assignee of a lease made by Matthew Crawford on December 4, 1890, for it and 33 acres adjoining, to T. J. Vandergrift, in consideration of $500 cash and one-eighth of the oil to be produced thereon for three years, or "as much longer as oil and gas is found in paying quantities thereon"; that Matthew Crawford, at the time of giving the lease, claimed to be the sole and absolute owner of the premises; that the company began drilling a well about March 20, 1892, and obtained oil in paying quantities about June 24, 1892; that between then and November 8, 1894, it drilled three other wells, all of which produced and are likely to produce oil for some time; that in said operations it had expended $30,000; that Matthew Crawford, up to the time of his death, received his one-eighth royalty; that on November 27, 1894, the Woodland Company assigned the leasehold to the respondent company; that since the death of Matthew Crawford the royalty has been run to a suspense account in the pipe line, because the heirs or devisees of Matthew Crawford could not agree to whom it was coming. It also alleged complainant had full knowledge of the lease and the operations thereunder, that she never made any objections, that the bill shows no case for equity, and prays such benefit as though the bill were demurred to. On April 22, 1895, petitions for intervention as parties complainant were filed by five other children of Matthew Crawford and the children of a sixth one, deceased, and the same day, on motion of complainants' counsel, no objection being made by respondent, it was ordered "that the said petitioners, and each of them, have leave, and leave is hereby granted to them, to intervene in this suit for their own interests and the interests of those whom they represent, and to that end to appear in the suit in the same manner and with like

effect as if they were named in the original bill as plaintiffs having or claiming an interest in the matter therein in controversy."

Assuming, for present purposes, that, by the will of his father, Matthew Crawford took a life estate in the land, and his children took in remainder, and assuming the jurisdiction of the court is not ousted by the intervention of the additional parties, whose residence or citizenship is not stated, and who represent separate undivided interests in the land other than that of Mrs. Erskine, the original complainant, the paramount question still remains, is the case one of equitable jurisdiction? Assuming the complainants took in remainder the undivided seven-thirteenths of the land, yet the filing of the bill found the respondent in sole, exclusive, and adverse possession of it under claim of title, and such possession dating back to a time prior to the right of entry of complainants, and the alleged title having its origin in the grant of the holder of a prior freehold estate, namely, Matthew Crawford, the life tenant. While the bill does not, in words, pray to acquire possession of the wells, yet in substance and effect that is its purpose. It seeks to restrain respondent from operating the wells or taking the oil, and these acts are, where oil and gas are concerned, the essential attributes of possession. The supreme court of Pennsylvania, in the case of Gas Co. v. DeWitt, 130 Pa. St. 250, 18 Atl. 724, after discussing the peculiar character of gas and oil and their production, say: "The one who controls the gas [the subject-matter of the case before it]—has it in his grasp, so to speak—is the one who has possession in the legal as well as in the ordinary sense of the word." A bill, then, which in substance would deprive one in possession of everything which constitutes possession, whatever it is in name, is in fact one to divest possession, or what is known as an "ejectment bill." In Messimer's Appeal, 92 Pa. St. 169, a bill was filed by parties claiming an undivided fourth in an oil lease and well against parties in possession. The respondent admitted complainants' title to an undivided eighth, and denied it as to the other eighth. Complainants did not ask to restrain respondent from operating the well, but prayed for a receiver and an accounting. In sustaining a decree dismissing the bill for want of grounds of equitable relief, the court say: "The case presented on bill and answer is simply the ordinary case of property claimed by one party (plaintiff) in the possession of another party (defendant). It is a mere ejectment bill, and there is nothing to give a court of equity jurisdiction." Such conclusion is in accord with other Pennsylvania cases. See Long's Appeal, 92 Pa. St. 179; Coal Co. v. Snowden, 42 Pa. St. 488; Gloninger v. Hazard, Id. 389. In the federal courts the line between law and equity, and consequently between legal and equitable rights and remedies, has been sharply defined, and strictly observed. The provision of the constitution vesting judicial powers "in cases in law and equity * * * between citizens of different states" recognizes the distinction. A constitutional amendment insures the right of trial by jury "in suits at common law when the value in controversy shall exceed twenty dollars," and the sixteenth section of the judiciary act of 1789 provides "that suits in equity shall not be sustained in either of the courts of the United States in any case where plain, ade-