

to be fastened on it could be passed upon by the court in the regular course of proceeding for the final hearing of such issue.

There is evidently a substantial issue between the receivers and the assessors. The bridge is certainly not an ordinary toll bridge, owned and operated by a toll-bridge company. It is certainly a very substantial and necessary railroad bridge, owned and operated by a railroad company, and it constitutes nearly a half mile of the length of its track in the state of Alabama. The railroad company, under an express grant of power, heretofore acquired, and is still exercising, the franchise of a toll-bridge company at that place, and the bridge in question is so constructed as to enable the railroad company, as the owner of the franchise for the toll bridge, to discharge its duty to the public, and to get a revenue therefrom. It would seem, therefore, that there is a property here not necessary to the operation of the railroad, or necessarily included in the returns made to the state auditor. But what part of this bridge is a toll bridge? Not the whole of it necessarily, because the railroad bridge must have a substructure, and there is but one substructure to the two-story superstructure. This inherent union of elements not only attaches to the structure as it stands, but it also attaches equally to the matter of its maintenance. There is a provision in the tax laws of Alabama which, having before us only its letter, and having no exemplification, by testimony or otherwise, of its practical application, we find it difficult to construe. It is under the subtitle "Other subjects of taxation and rates thereon," and reads thus: "(3) On the gross incomes of all gas works, electric light companies, telephone companies, street railways, toll bridges and ferries, and also all canals, ditches, channels, passes, tramroads and pole-roads used for transporting timber or other valuable commodities of commerce, at the rate that property is taxed." Code Ala. 1896, § 3912, subd. 3. We think the final disposition of the questions here presented requires an ampler record than we have before us, and therefore we affirm the action of the circuit court in refusing to dissolve the restraining order on the grounds presented, and remand the cause to be proceeded with to a final hearing according to the practice in such cases.

BOSTON & M. R. R. v. WADE.

(Circuit Court of Appeals, First Circuit. May 11, 1898.)

No. 217.

GARNISHMENT—DESCRIPTION OF DEFENDANT.

Defendant was summoned to answer touching its indebtedness to "the Central Vermont Railroad Company, a corporation established under the laws of the state of Vermont, and doing business under the name of the Ogdensburg Transit Company," and answered that it had no funds belonging to the defendant described, but that it had funds of the Central Vermont Railroad Company, and that the Ogdensburg Transit Company was an independent corporation. *Held*, that the defendant was properly charged as trustee.

In Error to the Circuit Court of the United States for the District of Massachusetts.

This is a writ of error brought by the Boston & Maine Railroad upon a judgment of the circuit court against the Central Vermont Railroad Company as principal defendant, whereby execution for the amount of the judgment was awarded as well against the goods, effects, and credits of the defendant in the possession of the Boston & Maine Railroad, as trustee.

A writ was served upon the Boston & Maine Railroad, in which writ "the Central Vermont Railroad Company, a corporation established under the laws of the state of Vermont, and doing business under the name of the Ogdensburg Transit Company," was described as defendant, and the Boston & Maine Railroad was summoned as trustee of the defendant. The Boston & Maine Railroad filed in the superior court an answer of "no funds"; and subsequently the cause was removed by the Central Vermont Railroad Company, describing itself as defendant, to the United States circuit court for this district. The plaintiff then filed interrogatories to the Boston & Maine Railroad, inquiring as to what property of the Central Vermont Railroad was in its hands at the date of the service of the writ, which the Boston & Maine Railroad declined to answer, alleging that the property of the Central Vermont Railroad Company was not attached. Thereupon plaintiff moved for a default for failure to answer his interrogatories, and the court below ordered that the Boston & Maine Railroad answer said interrogatories. The Boston & Maine Railroad then answered, disclosing funds in its hands belonging to the Central Vermont Railroad Company. By subsequent proceedings, the court below entered judgment against said Central Vermont Railroad, and against the Boston & Maine Railroad as trustee. The trustee's contention is that no attachment under the writ was directed or made of property in the hands of the trustee belonging to the Central Vermont Railroad, but that the writ directed only an attachment of the property of the Ogdensburg Transit Company (alleged to be an independent corporation) in the hands of the Boston & Maine Railroad, or of the Central Vermont Railroad, doing business under the name of the Ogdensburg Transit Company, in the hands of the Boston & Maine Railroad, and that, as the answers of the Boston & Maine Railroad disclose that it had no property of either in its possession at that time, no judgment against it could properly be entered.

Sigourney Butler, for plaintiff in error.

Robert M. Morse and Wm. M. Richardson, for defendant in error.

Before COLT, Circuit Judge, and WEBB and BROWN, District Judges.

PER CURIAM. The appellant's admission of the possession of funds belonging to the Central Vermont Railroad Company was a sufficient basis for the action of the circuit court in charging the appellant as trustee. The defendant described in the original writ was "the Central Vermont Railroad Company, a corporation established under the laws of the state of Vermont." The addition to this description of the words "and doing business under the name of the Ogdensburg Transit Company" cannot be regarded as sufficient to mislead the appellant as to the identity of the defendant, or to give rise to any substantial doubt that the Central Vermont Railroad Company was the sole defendant named in the writ. The judgment of the circuit court is affirmed, with the costs of this court to the appellee.

DESPEAUX v. PENNSYLVANIA R. CO.

(Circuit Court, E. D. Pennsylvania. June 16, 1898.)

No. 43.

LIMITATIONS—FRAUDULENT CONCEALMENT—WHAT CONSTITUTES.

In an action at law, not based upon fraud or violation of trust, the defendant cannot be deprived of the benefit of the statute of limitations on the ground of fraudulent concealment, upon proof merely of his silence.

Motion to Take Off Nonsuit.

James M. W. Newlin, for plaintiff.

David W. Sellers, for defendant.

DALLAS, Circuit Judge. The asserted cause of action accrued more than six years before this suit was brought. This appears from the plaintiff's statement of claim, which, however, especially avers that, owing to the "fraudulent concealment by the defendant" of the facts out of which his alleged right to recover arose, he was not able to and did not discover them until within two years of the date of this suit. With reference to this averment, this court, in overruling the defendant's demurrer, said: "If the plaintiff proves the fraudulent concealment of facts set out in the statement, the limitation does not, we think, apply." The plaintiff accordingly assumed the burden of proving the fraudulent concealment which he alleged, but he entirely failed to adduce any evidence upon which the jury would have been warranted in finding its existence. The only testimony which he offered upon the point was that of the plaintiff's business agent and attorney in fact. That witness, however, testified that during the years 1881, 1882, and 1883, when the discriminations in transportation charges complained of were alleged to have been made by the defendant against the plaintiff, he (the witness) did not have any conversation with any agent of the defendant company upon the subject. Only upon one occasion, late in 1885 or early in 1886, did he have any conversation about rates with any person representing the defendant company; and the correctness or incorrectness of the information then given him is wholly immaterial. Even if what he was then told was absolutely false, it did not amount to a fraudulent concealment of anything which had existed or had been done two or three years before. I have carefully read and re-read the whole of the testimony of this witness, and find it impossible to believe from it that he made, or intended to make, any inquiry with reference to the period of time covered by the plaintiff's claim. On the contrary, the substance of all that occurred at the only interview to which he has testified seems to have been this: He said that he had been told that other persons were then obtaining lower rates than himself, and he asked that the same rates should be accorded to him, and was told, in reply, that the plaintiff was charged no more than others. This plainly referred to the time of the interview, and not to a period three years prior thereto. Therefore I thought upon the trial, and I still think, that to have permitted the jury, from such evidence, to