

LANCASTER et al. v. ASHEVILLE ST. RY. CO. et al.

(Circuit Court, W. D. North Carolina. November 10, 1898.)

1. JURISDICTION OF FEDERAL COURTS—CITIZENSHIP OF PARTIES—LOCAL ACTIONS.

Under the judiciary act of 1888 (25 Stat. 433), a circuit court of the United States cannot entertain a personal action by joint plaintiffs who are citizens of different states against a defendant who is not an inhabitant of the district where the action is brought, but such provision does not affect the jurisdiction of the court in local actions to enforce a lien or claim upon real estate or personal property within the district.

2. RECEIVERS—GROUNDS FOR APPOINTMENT.

To justify a court of equity in appointing a receiver pendente lite, the plaintiff must show at least a probable interest in the property, and there must exist a well-grounded apprehension of immediate injury to such interest unless the property is taken in charge of by the court.

3. SAME—DISPLACEMENT OF ANOTHER RECEIVER.

A receiver will not be appointed by a federal court for a street railroad in a suit by bondholders to which other creditors, holding a large part of the road's indebtedness, are not parties, where no fraud or bad faith towards plaintiffs is shown, and the property is already in the hands of a receiver appointed by a state court, whose management is shown to be excellent, and to meet the entire approval of those most largely interested.

Duff Merrick and C. A. Webb, for plaintiffs.

F. A. Sondley and R. Burnham Moffat, for defendants.

EWART, District Judge. This is a bill in equity filed by G. W. Lancaster, a citizen of the state of Florida, and Jeanette H. Martin, a citizen of the state of Massachusetts, against the Asheville Street-Railway Company, the Asheville Street-Railroad Company of Asheville, N. C., the Atlantic Trust Company of New York, W. A. White, A. M. White, and Alfred T. White, individually, and as trading under the firm name and style of W. A. & A. M. White, citizens of New York, and George B. Moffat, a citizen of New York. The Asheville Street-Railway Company on the 2d of July, 1888, became the owner of a certain street railway in the city of Asheville, and operated the same by virtue of its charter and certain franchises granted to it by the city of Asheville. On the same date, to wit, July 2, 1888, it executed and issued first mortgage bonds to the amount of \$50,000. To secure the payment of said issue of bonds the said Asheville Street-Railway Company duly executed and delivered to the Atlantic Trust Company (a corporation organized and existing under the laws of the state of New York, and a citizen of that state, with its principal place of business in New York) its certain first mortgage or deed of trust, thereby conveying to the latter, as trustee, all of its property and franchises then owned, and all that might hereafter be acquired. The plaintiff Lancaster became the purchaser of 8 of these first mortgage bonds, of \$500 each. The plaintiff Jeanette H. Martin also acquired and is now the owner of 4 of the first mortgage bonds, of \$500 each. Prior to the commencement of a suit in this court entitled "Atlantic Trust Company v. Asheville Street-Railway Company and the Asheville Light & Power Company," the Asheville Street-Railway Company paid off, took up, and retired 48 of the said first mortgage bonds, leaving outstanding only 52 of the said bonds, among

which are those held and owned by the plaintiffs. On the 1st of July, 1890, the defendant the Asheville Street-Railway Company executed and placed upon the market for sale another issue of bonds, amounting to \$100,000, and, to secure payment of the same, executed and delivered a second mortgage upon all its property and franchises to the Atlantic Trust Company. Only 74 of said mortgage bonds were ever sold, and of this number W. A. White and A. M. White were large holders. On the 29th of April, 1898, because of default made in the payment of the interest then due on said bonds, the Atlantic Trust Company, as trustee, brought suit in the United States circuit court against the Asheville Street-Railway Company and the Asheville Light & Power Company, a corporation, whose property had been secured by the Asheville Street-Railway Company, for the purpose of foreclosing said mortgage or deed of trust, entitled "Atlantic Trust Company, Trustee, vs. Asheville Street-Railway Company and the Asheville Light & Power Company." In this suit a decree was rendered by which all the property of the Asheville Street-Railway Company, as conveyed in and by second mortgage, was sold, and purchased by A. M. White, "purchasing in behalf of himself and his associates, forming a corporation to be known as the Asheville Street-Railroad Company, under section 697, c. 16, Code N. C." This sale was confirmed, and a deed duly executed and delivered to the said Asheville Street-Railroad Company by the commissioner designated by the court to make such sale. By the terms of said sale, as expressly set forth in the said order of sale, the decree of confirmation, and the said deed, the said defendant the Asheville Street-Railroad Company took all the said property, subject "to the lien of the twenty-six thousand dollars of bonds secured by the mortgage or deed of trust executed by the Asheville Street-Railway Company to the Atlantic Trust Company, as trustee, dated July 2, 1888," which is the first mortgage. There has never been any decree of foreclosure in this or any other court as to said first mortgage or deed of trust. Shortly after, the defendant the Asheville Street-Railroad Company went into possession of the said property; and on or about the 7th of January, 1895, the sheriff of Buncombe county, by virtue of an execution issuing from the superior court of said county upon a certain judgment therein docketed in favor of one Sarah Cawfield against the Asheville Street-Railway Company, sold to one C. A. Moore all the franchises and property hitherto conveyed to the Asheville Street-Railroad Company by A. T. Summey, commissioner, and put the said Moore in possession thereof. Immediately thereafter the Asheville Street-Railroad Company brought suit in the superior court of Buncombe county against the said C. A. Moore for the possession of the said property, alleging that the sale was irregular, fraudulent, and void. Pending this suit one J. E. Rankin was appointed receiver of all the property in controversy between the parties, and is now acting in such capacity. The suit of the Asheville Street-Railroad Company against C. A. Moore is still pending in the said superior court. In September, 1892, defendant George B. Moffat purchased from C. A. Moore and Sarah Cawfield the Cawfield judgment, and the claim of title of the said Sarah Cawfield and Charles A. Moore, paying therefor the sum