

lacher Chemical Company was concerned. The record clearly discloses the fact that said company was a corporation of the state of New York, and that it had no office and no agent in the state of North Carolina. The effort to bring that company before the court by serving a copy of the summons on one of its directors, who at the time was found in the state of North Carolina, but who resided elsewhere, was admitted in the argument of counsel for appellant to have failed in its purpose. It is true that a voluntary appearance of a defendant is equivalent to a personal service of the summons upon him, but the record in this case shows no such appearance, and we have no right to presume it. It was not shown that said company was transacting business in the state of North Carolina by either an agent or one of its officers appointed to represent it in that state, on whom process could have been served; nor was it claimed that the provisions of any North Carolina statute made foreign corporations amenable to suits in that state as a condition to their transacting business therein. The said appellee was sued in a district other than that in which it was a citizen, and, as it had neither appeared, nor been legally served with process, the court below properly dismissed the suit as to it. We find no error in the judgments complained of, and they are affirmed.

REAL-ESTATE TRUST CO. OF PHILADELPHIA v. NEW ENGLAND
LOAN & TRUST CO.

(Circuit Court, S. D. New York. March 6, 1899.)

INSOLVENT CORPORATIONS—RECEIVERS—PROCEEDS OF PLEDGED SECURITIES.

The proceeds of mortgages owned by an insolvent loan and trust company, but which had been pledged by it to trustees to secure its debentures, both principal and interest, constitute a trust fund in the hands of its receiver, which cannot be used by him for the ordinary purposes of the receivership, notwithstanding any rights therein the company might have had under its contracts while a going concern.

Application of receiver for instructions as to interest on mortgages assigned by defendant to trustees for debenture series.

Thomas M. Day, Jr., for the motion.
Frederick Goeller, opposed.

LACOMBE, Circuit Judge. The written contracts contain no provisions regulating what is to be done when the loan company becomes bankrupt. From the day it went into the hands of the receiver it has been powerless to discharge any of the functions contracted for. It happens that the receiver, the officer of the court, finds in his hands some money paid by mortgage debtors on their mortgages. To what extent the loan company might have used this, if it had continued as a going concern, and as the agent of the trustees to collect such interest, is wholly immaterial. The mortgages were all transferred to the trustees, and expressly pledged as security for the debentures. The pledge of each mortgage carried with it, not only the principal,

but also all interest which might accrue thereon. Interest and principal alike should be treated as trust funds. The general creditors have no interest in either. Instructions accordingly.

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METROPOLITAN TRUST CO. OF CITY OF NEW YORK v. COLUMBUS,
S. & H. R. CO. et al.

(Circuit Court, S. D. Ohio, E. D. April 21, 1899.)

No. 887.

1. RAILROADS—NOTES FOR EQUIPMENT—OHIO USURY STATUTES.

By Rev. St. Ohio, § 3183, 8 per cent. is fixed as the limit of lawful interest. Section 3287 authorizes railroad companies to borrow money at a rate of interest not exceeding 7 per cent., and to issue bonds or notes for the same. By section 3290 it is provided that the directors may sell or negotiate such bonds or notes at not less than 75 per cent. of par. *Held* that, in so far as the latter sections permit railroad companies to borrow money at a rate of interest exceeding 8 per cent., their effect is to repeal the usury laws as to such companies, and that notes or lease warrants executed by a railroad company for deferred payments on equipment purchased conditionally, which were payable monthly as rental, the title to the equipment to vest in the company on their full payment, are not usurious, though their amount is greater than the stated value of the equipment with 8 per cent. interest until their maturity, but not greater than would have been required if they had borne 7 per cent. interest, and had been discounted at 75 per cent. of par.

2. SAME—AUTHORITY TO ISSUE NOTES—OHIO STATUTES.

Nor are such notes *ultra vires*, in view of the provisions of section 3287, Rev. St. Ohio, which authorizes railroad companies to secure their bonds or notes by a pledge of their property or income.

3. SAME—CONDITIONAL PURCHASE OF EQUIPMENT.

The Ohio act of May 4, 1885 (82 Ohio Laws, p. 238), relating generally to conditional sales of personal property, and requiring the seller, before retaking possession of the property for condition broken, under penalty of criminal prosecution, to tender to the purchaser repayment of at least 50 per cent. of the amount paid thereon, does not apply to conditional sales of equipment to railroad companies which were specially provided for by the act of March 16, 1882 (79 Ohio Laws, p. 45), recognized as remaining in force after the passage of the general act of 1885 by its amendment by the act of April 12, 1889 (86 Ohio Laws, p. 255).

4. SAME—RIGHT OF SELLER TO RETAKE PROPERTY.

A corporation making a conditional sale of equipment to a railroad company, rental to be paid therefor, and applied on the purchase price, but the title to remain in the seller until full payment, on a foreclosure of mortgages against the railroad company before full payment is entitled to take back the equipment, or, in case the mortgagees elect to retain it, to a first lien on the property of the company for the amount still due thereon.

This is a railroad foreclosure bill. The complainant, in seeking a sale under its mortgage, has brought in all persons claiming a lien on the railroad, or any part thereof, for the purpose of a sale of the road free from incumbrance. Among the defendants thus brought in is the Railroad Equipment Company. The Railroad Equipment Company claims about \$40,000 on certain so-called "lease warrants," issued to evidence the rentals due upon equipment furnished to the defendant company either by the Railroad Equipment Company or its assignors.