TOLEDO, ST. L. & K. C. R. CO. et al. v. CONTINENTAL TRUST CO. et al.

HAMLIN et al. v. SAME.

ROSE v. SAME.

(Circuit Court of Appeals, Sixth Circuit. July 5, 1899.)

Nos. 640, 641, 673.

1. JURISDICTION OF FEDERAL COURTS—FORECLOSURE OF RAILROAD MORTGAGE —POSSESSION OF RECEIVER.

   Where a federal court, by its receiver, has possession of all the property of a railroad company for the purpose of administering it as the property of an insolvent corporation in a suit brought by general creditors, such possession draws to that court, as auxiliary, all suits and proceedings with respect to the property, and it has jurisdiction of proceedings to foreclose a mortgage without regard to the citizenship of the parties, whether such proceedings are by cross bill or intervening petition in the pending suit, or by an original bill.[1]

2. SAME—BILL ANCILLARY TO CREDITORS' SUIT—PROCEDURE.

   The fact that a federal court acquires jurisdiction of a suit to foreclose a railroad mortgage, by reason of its being ancillary to a pending creditors' suit, in which the court has, through its receiver, taken possession of the mortgaged property, does not make the two suits one, though, for convenience in hearing, they are consolidated, nor does it affect the rules governing parties, issues, or pleading in the foreclosure suit, and, where the mortgage constitutes the first lien on the property, it is not necessary that a decree of foreclosure should await the establishing and adjustment of all claims filed in the creditors' suit.

3. EQUITY—CONSOLIDATION OF SUITS.

   Rev. St. § 921, authorizing consolidation of suits, applies as well to suits in equity as at law, and the consolidation of two suits in equity is within the sound discretion of the court, but suits consolidated remain separate as to parties, pleadings, and decrees, unless otherwise directed.

4. ESTOPPEL—CREDITORS OF DE FACTO CORPORATION—DENIAL OF CORPORATE EXISTENCE.

   Creditors of a de facto corporation, who dealt with it as a corporation, are estopped to deny its corporate existence for the purpose of defeating a mortgage which it executed in such capacity.

5. RAILROAD COMPANIES—CONSOLIDATION—DE FACTO CORPORATIONS.

   Where the statutes of a state authorize the consolidation of railroad companies of the state with those of other states under certain conditions or circumstances, a consolidation of such companies creates a de facto corporation, even though the constituent companies did not possess the qualifications required by the statute to render the consolidated company a corporation de jure, and its corporate existence can only be questioned on that ground by the state.

6. SAME—CONSOLIDATION UNDER ILLINOIS STATUTE.

   Under the statute of Illinois (3 Starr & C. Ann. St. p. 3241), providing that "whenever any railroad which is situated partly in this state and partly in one or more other states, and heretofore owned by a corporation formed by consolidation of railroad corporations of this and other states," has been sold under a decree of a court, and "purchased as an entirety," and is held by corporations of the different states in which it is situated, the Illinois corporation owning the portion within that state may consolidate with the others, it is no objection to the legality of such consolidation that the original consolidated company which operated the road before its sale, as to a short section of it, held only the equitable title, the legal

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[1] As to mortgage foreclosures in federal courts generally, see note to Seattle L. S. & W. Ry. Co. v. Union Trust Co., 24 C. C. A. 523.

title being in a local company, practically all of whose stock was owned by the consolidated company, nor can it be held that the road was not "purchased as an entirety," within the meaning of the statute, because it was sold in two divisions, being covered by separate mortgages, where both divisions were sold on the same day to the same purchaser, and were conveyed by one deed.

7. SAME—CONSOLIDATION UNDER OHIO STATUTE.
Under Rev. St. Ohio, § 3380, which permits the consolidation of an Ohio railroad company with a company of "an adjoining state," where the roads of the two companies will form a continuous line, the legality of a consolidation between an Ohio and an Indiana company is not affected by the fact that an Illinois company is also included as a constituent member of the consolidated company, where the roads owned by the three companies form a continuous line.

8. SAME — VALIDITY OF BONDS — PRICE RECEIVED WHEN ISSUED IN PAYMENT FOR PROPERTY.
In ascertaining the price for which bonds of a railroad company were sold, for the purpose of determining their validity under a statute prohibiting their sale for less than 75 per cent. of their par value, but which fixed no minimum limit on the sale of stock, where the bonds were not sold for cash, but an amount of both bonds and stock were issued to a contractor in consideration of his agreement to purchase a railroad at foreclosure sale, to pay off liens thereon, to reconstruct it, changing it from a narrow-gauge to a standard-gauge road, and to equip it with rolling stock (in effect as the purchase price of a reconstructed and newly-equipped road), it is not necessary that the value of the consideration received by the company should be equally distributed between both bonds and stock, according to the amount of each issued to the contractor, but the stock may properly be computed in the payment at its market value; nor is the value of what was actually done by the contractor the measure of the consideration received by the company for the bonds, but the value of what he undertook by his contract to do.

9. SAME—RIGHT OF SUBSEQUENT CREDITORS TO ATTACK VALIDITY OF BONDS.
Where a full settlement has been made between a railroad company and a contractor, to whom the company issued bonds in payment for work, which settlement was acquiesced in by all parties in interest, subsequent creditors of the company cannot attack the validity of the bonds on the ground of fraud on the part of the contractor or a failure to properly perform the contract.

10. SAME—PURCHASE OF BONDS BY DIRECTOR FROM CONTRACTOR—OHIO STATUTE.
Rev. St. Ohio, § 3313, providing that all stock, bonds, or securities of a railroad company purchased of the company by a director thereof, either directly or indirectly, for less than their par value, shall be "null and void," applies only to original sales made by the company, and the acquiring of an interest in bonds by a director through a contractor to whom the company had contracted to deliver them in payment for work, after they had been issued by the company, and deposited with trustees to be delivered to the contractor as the work progressed, either by direct purchase, or by a secret agreement, made after such issuance and deposit, for a share of the profits of the contract, does not invalidate such bonds.

11. SAME—VERBAL OPTION GIVEN BONDHOLDERS OF OLD COMPANY.
Nor are they void under the statute by reason of a verbal option given certain directors by the contractor to purchase bonds from him for less than par, after they were earned under his contract, in consideration of their consent, as bondholders of a prior company, to a certain plan of reorganization, which agreement was wholly collateral to his contract with the company.

12. SAME—WAIVER OF DEFENSE—RIGHTS OF SUBSEQUENT CREDITORS.
Such statute is for the protection of the corporation, and does not make stock or bonds of a company sold to a director for less than par absolutely void, but voidable only, and subsequent creditors cannot attack the valid-

ity of bonds on that ground, where it is not questioned by the corporation or its stockholders.

13. SAME—LIEN OF PREFERRED STOCKHOLDERS—LACHES.
A provision in certificates of preferred stock issued by a railroad company, making such stock a lien on not only the net earnings, but on the property of the company, is not illegal, as against common stockholders, in the absence of a statute or charter provision affecting it; and, where such certificates were issued and placed on the market with the knowledge and acquiescence of the then owner of all the common stock, holders of common stock cannot after 10 years, and on final distribution of the property of the company for the first time, raise the objection that such provision was not authorized by any action of the directors.

14. SAME — DE FACTO DISSOLUTION—FORECLOSURE—SALE OF PROPERTY AND FRANCHISES—DISTRIBUTING SURPLUS.
Where the entire property and franchise of a railroad company are sold in foreclosure proceedings, and conveyed to the purchaser, such act puts an end to the capacity of the company to do the only business for which it was created, and may be treated as a de facto dissolution of the corporation, for the purpose of a final administration of its assets; and such action is especially justified where there are preferred stockholders having a prior right in the distribution of any surplus remaining after payment of the debts of the corporation, but who have no voice in its management, and, in such case, a pending creditors' suit against the company may be utilized by the court for the purpose of requiring all creditors, on due notice by publication, to present their claims, and, on their adjustment and payment, for making distribution of any surplus in accordance with the rights of the stockholders as established in the foreclosure suit.

15. APPEAL—DECREE REFUSING LEAVE TO INTERVENE.
No appeal lies from a decree refusing leave to intervene and become a party.

Appeals from the Circuit Court of the United States for the Northern District of Ohio.

The appeal in the principal case, styled as above, is an appeal by the railroad company, and various intervening creditors of that company, from a decree foreclosing a first mortgage made by said railroad company to secure an issue of its bonds aggregating $9,000,000, and directing a sale of all of its property and franchises, and dismissing various intervening petitions filed by unsecured creditors of said mortgagor railroad company attacking the validity of its mortgage bonds upon various grounds, and from a decree upon the cross bill of Charles Hamlin and others, giving to holders of preferred stock issued by said railroad company a preference over the common stock in the surplus of the property of said railroad company, after the payment of all of the debts of the company. The appeal of Charles Hamlin and others is from so much of the decree of sale as charged the property of the railroad company with a lien for all debts of the company which might at any time be established to the extent that the holders of such preferred shares might use the same in paying any bid made by them as purchasers at the foreclosure sale of said property. The appeal of Dana A. Rose is from a decree striking an intervening petition filed by him from the files.

The Toledo, St. Louis & Kansas City Railroad Company is a consolidated corporation of Ohio, Indiana, and Illinois. Its road extends from Toledo, in Ohio, to East St. Louis, in Illinois, and is 450 miles in length. This consolidated company was organized June 19, 1886, by a consolidation of three constituent companies, corporations, respectively, of the states of Ohio, Indiana, and Illinois. In May, 1893, Stout and Purdy, citizens of New York, and judgment creditors of the said consolidated company, filed a creditors' bill in the circuit court of the United States for the Western division of the Northern district of Ohio against said railroad company, in behalf of themselves and other creditors. Like bills were filed at the same time in Indiana and Illinois. Under these bills, the same receiver was appointed in each jurisdiction, and the entire line of railway was thereafter operated under the direction of the

circuit court for the Northern district of Ohio, that being the court of original and primary jurisdiction. Other creditors were, by publication under order of the court, invited to come in under that bill, and to file their claims before the master, and many of them did so; among them being a committee representing the holders of first mortgage bonds as a class. At the time of the filing of this creditors' bill, there had been no such default in payments of interest upon the mortgage debt as would authorize foreclosure. Such default did subsequently occur, and thereupon the trustees under the first and only mortgage filed a bill in the same circuit court for the foreclosure of that mortgage. These trustees were the Continental Trust Company, a corporation of the state of New York, and John M. Butler, a citizen of the state of Indiana. The defendants under this foreclosure bill were the railroad company, the receiver appointed under the creditors' bill of Stout and Purdy, and certain judgment creditors of the railroad company. This bill was filed by leave of the court, and the receiver under the creditors' bill was made receiver under the foreclosure bill. At the same time an order was made consolidating the creditors' suit with this foreclosure proceeding, and directing that the consolidated cause should take the title of the foreclosure proceeding, and that the receivership under the creditors' bill should be extended to the said foreclosure suit. Answers were filed to this foreclosure suit by the railroad company, and by the judgment creditors made parties defendant thereto. The answer of the railroad company declined to admit that it was a validly consolidated company, though it had acted as such; declined to admit the validity of the mortgage or of the bonds secured thereunder; denied default in interest as well as insolvency; and declined to admit the averments of the bill as to the bona fide character of the owners of the mortgage bonds. Some of the judgment creditors made defendants denied the legality of the consolidation under which the mortgagor company became a corporation; denied the power of the company to make a mortgage or issue bonds; and denied that the present holders of said bonds were bona fide holders for value; and asserted the priority of their judgments over the bonds. In the foreclosure suit certain creditors of the railroad company were permitted to intervene by petition for the purpose of attacking the validity of the bonds of the railroad company. This they did, by averring that all of the bonds had been sold by the company at less than 75 cents on the dollar, in contravention of section 3290, Rev. St. Ohio, and also that they had been purchased by directors at less than par, and were therefore void, under section 3313, Id. Hamlin and others, representing a majority of the preferred stock of the company, were also admitted as defendants to the foreclosure suit, and allowed to answer and file a cross bill. The history of the admission of these preferred stockholders as defendants, over the objection of the complainants in the foreclosure suit, is fully stated in the opinion of this court, reported as Hamlin v. Trust Co., 47 U. S. App. 422, 24 C. C. A. 271, and 78 Fed. 664. The answer of the Hamlins, as representatives of the class of preferred stockholders, denied the validity of the bonds, upon the ground that they had been fraudulently paid out to one S. H. Kneeland, the holder of the entire common stock of the company, upon a contract with him under which he was obligated to convert the original narrow-gauge railroad into a first-class standard-gauge railroad, with full equipment of engines and rolling stock, and pay off all liens prior to the mortgage, in consideration of the bonds and common stock of the consolidated company. It was averred that Kneeland had not performed his contract in respect to the reconstruction and re-equipment of the railroad, and had not paid off some $700,000 of liens which he was bound to discharge, but that through fraud he had procured the issuance to him of the entire issue of bonds, aggregating $9,000,000, and of the entire common stock of $11,250,000, and $1,000,000 in preferred stock, and that the value of things done in the performance of his contract did not exceed $5,000,000, and that he had therefore received the bonds for about one-third of their par value, in violation of the laws of Ohio, Indiana, and Illinois. It was also averred that the bonds had been taken by their present holders subject to all defenses, and with full knowledge and notice of the facts which made them invalid. By Hamlin's cross bill, it was sought to have an account taken with Kneeland, and the amount received for the bonds ascertained, and the holders of such bonds limited to a recovery of the value received by the company. A lien

second only to the valid bonds was asserted in behalf of the said preferred shares of stock. The lien claimed in behalf of the preferred stockholders arises under the terms set forth in the certificates issued to holders of such stock, which were in the form following:

"Toledo, St. Louis & Kansas City Railroad Company.

"No. —. Preferred Capital Stock. 10 Shares.

"This is to certify that James M. Quigley or bearer is entitled to ten shares, of one hundred dollars each, of the preferred nonvoting capital stock of the Toledo, St. Louis & Kansas City Railroad Company. This constitutes a lien upon the property and net earnings of the company next after the company's existing first mortgage. It does not entitle the holder to vote thereon. After the first day of January, 1888, it is entitled to and carries interest at the rate of 4 per cent. per annum, payable semiannually, represented by interest coupons attached to this certificate. Such interest is only payable out of the net earnings of the company after the payment of interest upon its existing first mortgage bonds, and the cost of maintenance and operation. A statement showing the business of the company for the half of its fiscal year next preceding shall be exhibited at the office of the company in New York, to the holder of this certificate, at the maturity of each interest coupon, and the net earnings applicable to such interest shall be reckoned for such period. Such interest is not to accumulate as a charge, and the coupons representing unearned interest must be surrendered and canceled on the payment, in whole or in part, of a subsequently maturing coupon. At any time after the first day of January, 1888, this certificate may be converted into the common capital stock of the company. If not converted then, to become a preferred 4 per cent. noncumulative stock. The company will create no mortgage of its main line other than its first mortgage, nor of any part thereof, except expressly subject to the prior lien of this certificate, without the consent of the holders of at least two-thirds of this stock present at a meeting, of which reasonable personal notice must be given to each registered stockholder, and by publication for at least three successive weeks in two leading daily papers, newspapers published in the cities of New York and Boston. One-third of the entire issue of this stock, present in person or by proxy, shall constitute a quorum. Nor will the company increase the issue of these certificates of stock without consent obtained as above. These certificates of stock shall be transferable by delivery or by transfer on the books of the company in the city of New York, after a registration of ownership certified thereon by the transfer agent of the company.

"Countersigned:

"American Loan & Trust Company, ————, President.

"By ————. ————, Secretary.

"New York, June 19, 1886.

"Shares, $100 Each.

"The Toledo, St. Louis & Kansas City Railroad Company will pay to bearer, on the first day of January, 1898, upon the surrender of this warrant at its office or agency in the city of New York, any amount that may be due hereon, under the conditions set forth in the certificate of stock to which this is attached, not exceeding the sum of twenty dollars.

"Coupon No. 20. No. —.

"Isaac White, Secretary."

The Continental Trust Company answered this Hamlin cross bill, and denied all the averments bearing upon the validity of the bonds. This cross bill was filed in behalf of all holders of preferred stock who might elect to come in as co-complainants, and, by direction of the court, advertisement was made by the master requiring all holders of preferred stock, who desired to become co-complainants with the Hamlins, to do so within a stated time.

One Dana A. Rose, claiming to be a holder of such shares, not content to become a co-complainant with the Hamlins, filed a separate intervening petition, in which he not only attacked the validity of the bonds issued by the railroad company, but the validity of the clause in the preferred stock certificates providing that such stock should be a lien upon the property of the railroad company next after the first mortgage. This, having been filed without

leave, was stricken from the files, and several motions intended to make issues upon the averments of his pleading were denied. This refusal of the court to admit him as a defendant, with the right to file a separate cross bill in behalf of himself and such other holders of preferred shares as might elect to come in under his pleading, is the occasion for a separate appeal by said Rose. Under the creditors' bill of Stout and Purdy, issues as to the validity of the bonds were presented by the answer 5 or intervening petition of the same creditors who had answered the foreclosure bill. These petitions or answer 5 attacked the validity of all the bonds upon the ground that they had been sold for less than 75 per cent. of their par value, in violation of a statute of the state of Ohio, and also attacked the validity of about one-half the bonds upon the ground that they had been sold to a director of the railroad company for less than par, in violation of section 3313, Rev. St. Ohio. Another issue was made between the railroad company and the holders of preferred stock, upon the ground that the clause in the certificates issued making said preferred stock a lien upon the property of the company had been inserted through fraud, and without the authority of the railroad company. Still another issue was tendered by one of the intervening petitions filed in the foreclosure suit by a general creditor of the railroad company, namely, whether or not the Toledo, St. Louis & Kansas City Railroad Company was a corporation de jure or de facto. This attack is based upon the averment that there was no law under which the constituent companies could become a consolidated corporation. An order was made requiring the master in the creditors' suit to make publication requiring all creditors within a given time to file their claims, and giving notice as to the time and place when and where a hearing upon all claims would be had, and fixing a time within which objections to such claims might be filed. Under this order, a large number of claims were filed, including the claim of the mortgage bondholders. Unsecured creditors filed, in opposition to the allowance of the bonds, objections going to the existence of the mortgagor corporation, the validity of the mortgage, and the validity of the bonds. After the issues had been thus made up, motions were filed by the appellants as follows: (1) To dismiss the foreclosure bill for want of jurisdiction, on the ground that the necessary diversity of citizenship did not exist, as shown by the face of the bill; (2) to set aside the order consolidating the creditors' bill with the foreclosure suit. These motions, together with others of like purport, were overruled.

Upon the issues thus raised a vast amount of evidence was filed, constituting now a printed record of 4,000 pages. Upon a final hearing, the circuit court in the foreclosure suit decreed as follows: First. That the entire property of the railroad company was lawfully within the exclusive custody and possession of the circuit court under the creditors' bill of Stout and Purdy, and that this fact gave the court jurisdiction to entertain the subsequent foreclosure bill, notwithstanding the requisite diversity of citizenship did not exist to give the court jurisdiction upon that ground. Second. That the railroad company was, at least, a corporation de facto, and that its corporate character was not open to attack by either the corporation itself, or any stockholder, or any creditor who had dealt with it as such. Third. That the bonds were not sold for less than 75 per cent. of their par value, as charged. Fourth. That none of the bonds had been sold at less than par by the railroad company to a director. Fifth. That the mortgage securing the bonds was valid, and the bonds unaffected by fraud. Sixth. That the holders of preferred stock were entitled to a preference over the common stock in the distribution of the surplus of the railroad company's property, after payment of debts, and might become purchasers of the property at the sale ordered, using their shares to pay their bid, after paying into court in money a sufficient amount thereof to pay off the mortgage debt and all other debts of the railroad company, established in this or the creditors' suit, and all costs, etc., provided they should take the property subject to a lien to secure any other debts of the corporation which might be at any time established as a valid subsisting liability. Seventh. The property was ordered to be sold for the satisfaction of the mortgage debts, costs, preferential claims, and any surplus over and above such secured debts to be paid into the registry of the court for distribution among the general unsecured creditors who had or might establish their claims under the pending

creditors' suit. Eighth. In the creditors' suit the court entered a decree reciting the proceedings in the foreclosure suit, and awarding to the creditors, whose claims had been or might thereafter be established, any surplus arising from the sale in the foreclosure suit.

From both of these decrees the railroad company and certain unsecured intervening creditors have appealed. The Hamlins have appealed from so much of the decree in the foreclosure suit as requires them, if they become purchasers, and use their preferred stock in payment of any part of their bid, to take the property subject to the claims of creditors of the railroad company, to the extent they shall so use such preferred stock. The facts are more fully stated in the two opinions of Taft, circuit judge, reported in 82 Fed. 642, and 86 Fed. 929, both of which opinions are also made a part of this record. These opinions are referred to for a more detailed statement of the facts and issues here involved, so far as not in conflict with the facts as heretofore or hereafter stated in the opinion of this court.

John S. Miller, for Rose.
Lawrence Maxwell, Jr., for Railroad Co.
J. D. Springer, for creditors.
Henry Crawford and E. C. Henderson, for Trust Co.
F. Speigelberg, for intervening and judgment creditors.
J. Treadwell Richards, for the Hamlins.
D. W. Sanders, for creditors.

Before LURTON, Circuit Judge, and SEVERENS and CLARK, District Judges.

LURTON, Circuit Judge, after making the foregoing statement of facts, delivered the opinion of the court.

The principal questions arising upon the assignment of errors filed by the railroad company or the intervening general creditors are these: (1) Did the court have jurisdiction to entertain the foreclosure suit? (2) If the court had jurisdiction, did it err in hearing and deciding the issues which were raised under the foreclosure suit without deciding all of the issues raised in the creditors' suit? (3) Did the court err in holding that the railroad company was at least a corporation de facto, and in dismissing the intervening petition of the Rhode Island Locomotive Works, based upon the insistence that the consolidated company was not a corporation de jure or de facto? (4) Did the circuit court err in holding that the bonds were not illegal under section 3290, Rev. St. Ohio? (5) Did the circuit court err in holding that the bonds were not void for violation of section 3313, Rev. St. Ohio? (6) Did the court err in holding that the preferred stockholders were entitled to a preference in the distribution of the property of the corporation, after the payment of debts, over the common stockholders? These questions can be most conveniently discussed in the order in which they have been stated, and in connection with such further facts as have application to the particular question.

1. As to the jurisdiction of the court to entertain the foreclosure bill: The foreclosure bill was not a suit between parties having the requisite diversity of citizenship to give a court of the United States jurisdiction upon that ground. The jurisdictional fact averred in the bill was the fact that the property covered by the mortgage was within the actual custody and control of the court in which the

bill was filed, and was being operated under the order of the court by a receiver, whose custody was that of the court. The court's possession had been taken under a creditors' bill filed by Stout and Purdy, judgment creditors of the mortgagor railroad company, and was filed for the purpose of winding up the affairs of the company as an insolvent corporation, by marshaling liens, ascertaining debts, and bringing to sale the property of the company for distribution among all creditors who should come in according to their respective priority and right. That suit was, in every sense of the term, an administrative suit, brought not only for the benefit of Stout and Purdy, but of all other creditors of said railroad company. The required diversity of citizenship existed, and justified its being filed in a court of the United States. Under it the circuit court possessed full, complete, and exclusive jurisdiction and power to deal with the property of that company, and with all interests in it and with all controversies respecting it. Porter v. Sabin, 149 U. S. 473, 13 Sup. Ct. 1008. The priority of the mortgage and the validity of the bonds were admitted on the face of the bill, and, although the object of the suit was to ascertain all debts and marshal all liens, the mortgagees were not made defendants. To have done so would have defeated the jurisdiction, by making defendants persons whose citizenship was identical with that of the complainants. In this situation the mortgagees applied to the court for leave to file a bill to foreclose their mortgage. This exclusive custody and possession of the res by the court made the fact immaterial that some of the necessary defendants to the foreclosure suit were citizens of the same state of which one of the mortgagees was a citizen. The jurisdictional fact lies in the subject-matter of the litigation, which was a claim against property in custodia legis. It is true that the court might have permitted the mortgagees to become parties to the creditors' suit by petition pro inter esse suo, and to have filed a cross bill for the foreclosure of their mortgage. In Morgan's L. & T. R. R. & S. S. Co. v. Texas Cent. Ry. Co., 137 U. S. 171–201, 11 Sup. Ct. 61, a cross bill was filed by a mortgagee brought before the court as a defendant by supplemental pleading under a bill filed by a creditor claiming priority over the mortgage. The mortgagee answered, and filed a cross bill for the foreclosure of the mortgage, and this was done. The supreme court was urged to reverse the decree of foreclosure upon the ground that the pleading under which foreclosure was ordered was not a cross bill, pure and simple, and, treated as an original bill, it could not have been maintained, for want of requisite diversity of citizenship. This contention was overruled, and the jurisdiction maintained, the court saying:

"And whether this bill will be regarded as a pure cross bill, as an original bill in the nature of a cross bill, or as an original bill, there is no error calling for the disturbance of the decree, because the court proceeded upon it in connection with the other pleadings. The jurisdiction of the circuit court did not depend upon the citizenship of the parties, but on the subject-matter of the litigation. The property was in the actual possession of that court, and this drew to it the right to decide upon the conflicting claims to its ultimate possession and control. Minnesota Co. v. St. Paul Co., 2 Wall. 609; Bank v. Calhoun, 102 U. S. 256; Krippendorf v. Hyde, 110 U. S. 276, 4 Sup. Ct. 27."