
Michigan Central Railroad Co. v. Michigan Southern Railroad Co. et al.

manner in which the property was held and managed, are causes of very grave suspicion. The bill charges, that if this property was conveyed to her, "it was so conveyed with intent and for the purpose of hindering, delaying, and defrauding the creditors of the said John D. Bracy." The answer of Mrs. McRae does not deny this allegation.

In the course of responding to the claim of the bill founded on the trust-deed, her answer says: "She therefore charges, that there was no encumbrance whatever on the said slaves, or any of them, at the time she purchased them; and avers that she purchased them in good faith, and without any notice or knowledge whatever of a subsisting lien upon them by virtue of said deed of trust." We understand this averment of good faith on her part to relate simply to her ignorance of a lien by the trust-deed, and that it does not meet the explicit allegation in the bill, that the purpose of the sale was to conceal the property from creditors; and though the failure of the answer to meet this charge in the bill does not operate as a technical confession of its truth, it does lay a foundation for the belief that if the defendant could have truly denied it, she would not have foregone the decided advantage of such a denial in an answer which puts the complainant on proof of the contested fact by more than one witness.

The answer alleges, that the agreed price of the sale was \$3,500, payable in instalments of \$875 each, in five, six, seven, and eight years; and that four promissory notes were executed accordingly. It does not say what was done with the notes, after they were executed. No such notes were found among the effects of Bracy, to be inventoried. Neither of these notes, if in existence, had become payable when this bill was filed, and we think the attempt to show that something had been paid on account of them by the delivery of some cotton is not successful.

In our opinion, the charge in the bill, that the sale was fraudulent as to creditors, is made out in proof, and this is sufficient to sustain the decree of the Circuit Court.

The decree of the Circuit Court is affirmed with costs.

THE MICHIGAN CENTRAL RAILROAD COMPANY, PLAINTIFFS IN
ERROR, v. THE MICHIGAN SOUTHERN RAILROAD COMPANY
ET AL.

Where a case is brought up to this court by a writ of error issued to the Supreme Court of a State, under the twenty-fifth section of the judiciary act, if it appears

Michigan Central Railroad Co. v. Michigan Southern Railroad Co. et al.

that the judgment of the State court only involved the construction of State statutes which both parties in the cause admitted to be valid, the writ of error will be dismissed on motion.

THIS case was brought up from the Supreme Court of the State of Michigan, by a writ of error issued under the twenty-fifth section of the judiciary act.

The case is fully stated in the opinion of the court.

Mr. Walker moved to dismiss the writ of error for want of jurisdiction, which motion was sustained by himself in argument, and opposed by *Mr. Joy* on behalf of the plaintiffs in error.

Mr. Justice GRIER delivered the opinion of the court.

This case is before us on a motion to dismiss for want of jurisdiction.

It is a bill in chancery originating in the Circuit Court of Wayne county, in the State of Michigan, and afterwards taken by appeal to the Supreme Court of the State.

In order to give this court jurisdiction under the 25th section of the judiciary act, the record of the case must show, by direct averment or necessary intendment, that one of the questions enumerated in that section did arise, and was decided by the State court, as required.

If the subject of complaint be, that a State statute is repugnant to the Constitution of the United States, and therefore void, and that the State court has declared it to be valid, this fact should appear by some direct averment, either on the bill or answer, or in the decree of the court.

After scrutinizing with great care the rather prolix pleadings of this case, we are unable to find any complaint, by the bill or answer, that the Legislature of Michigan have passed any act affecting the rights of either party which "impairs the obligation of a contract;" nor is there an intimation in the decree that any such question arose in the case; nor is there any necessary intendment that such a question did arise, and was necessarily decided, from anything that does appear in the pleadings, evidence, or decree; on the contrary, it shows affirmatively that no such question did or could arise.

This will clearly appear from an examination of the bill and answer.

The bill alleges, that the complainants were incorporated by an act entitled "An act to authorize the sale of the Central railroad and to incorporate the Michigan Central Railroad Company," approved March 28, 1846; that they purchased the Central railroad, according to the terms of their charter, and

Michigan Central Railroad Co. v. Michigan Southern Railroad Co. et al.

have since that time completed and run said railroad; that, at the time of the act, the State of Michigan owned both the Central and Southern railroads; that the management of the Central road was found onerous and unprofitable; that it was an object to sell the same; that the road was not worth, to exceed \$800,000; and that the franchises and exclusive rights secured by the charter alone made it worth the sum they paid, viz: \$2,000,000; and that it was for the interest of the State to grant such franchises and exclusive rights, and that the exclusive privileges secured to them by the following provision in section five of their charter were especially valuable to them, and without which they would not have purchased said road:

“And no railroad or railroads from the eastern or southern boundary of the State shall be built or constructed or maintained, or shall be authorized to be built, constructed, or maintained, by or under any law of this State, any portion of which shall approach, westwardly of Wayne county, within five miles of the line of said railroad, as designated in this act, without the consent of this company.”

The bill further alleges, that the State at the same time resolved to sell the Southern railroad, but that said sale was only to take effect on the completion of the sale of the said Central railroad; that it was well understood by the complainants, the State, and the defendants, (the Southern Railroad Company,) that the sale of said Southern railroad was subordinate to the sale of the Central railroad, and that the act incorporating the said Michigan Southern Railroad Company, approved May 9, 1846, was subject to the complainants' charter; and that, by the sixth section of that act of incorporation, it is provided as follows:

“And the said Southern Railroad Company shall also, within three years after the passage of this act, extend, construct, and complete the Tecumseh branch from the village of Tecumseh, by way of Clinton, to the village of Jackson, by way of Manchester, and along the line of railroads formerly authorized to be constructed by the Jacksonburgh and Palmyra Railroad Company, or so far along the same as may not conflict with the provisions of an act entitled ‘An act to authorize the sale of the Central railroad, and to incorporate the Michigan Central Railroad Company,’ approved March 28, 1846, and put the same in operation, with sufficient motive power to do the business of the country depending on said branch.”

The bill further alleges, that the defendants are threatening to construct, and are taking the preliminary steps for constructing, said Tecumseh branch to the village of Jackson, and that ten miles of said branch railroad, if constructed, will be within

five miles of the complainants' railroad; and that said branch, together with the Erie and Kalamazoo railroad from Toledo to Adrian, and the Michigan Southern railroad to Monroe, will, in fact and effect, constitute one railroad, both to the eastern and southern boundary of the State, and therefore will be an invasion of the rights and privileges guarantied to the complainants by that provision of their charter before cited, and *beyond the powers granted to said Southern company*; and therefore an injunction is prayed for.

The answer of the defendants denies that the provision of the complainants' charter above cited applies to such a road as the Tecumseh branch, but only to parallel roads, or those nearly so; it avers that the Legislature could not grant powers so large and exclusive as those set up by the complainants; and that the Tecumseh branch, if built, would not, in fact or effect, together with the other railroads named, constitute one line of railroads, either to the eastern or southern boundary of the State, and the construction of the same would be no violation of the rights and privileges guarantied to the complainants by their charter, and that by their own charter they are not only authorized, but required, to construct said branch to Jackson.

The gravamen of the bill is, that the defendants are acting *without legislative authority*, and are usurping rights not granted to them by their charter. It nowhere asserts that they are acting under authority conferred on them by a legislative act which infringes the rights previously granted in the complainants' charter, or impairs the obligation of their contract. The answer puts in issue nothing but the construction of certain statutes which both parties admit to be valid. It is therefore abundantly apparent that this court has no jurisdiction to review the judgment of the Supreme Court of Michigan in this case.

A manuscript opinion of one of the judges of the Supreme Court of Michigan has been referred to by the counsel, in their argument in support of our jurisdiction. But even if this opinion had introduced some speculations on points not involved in the pleadings of the case, this court cannot resort to anything therein contained in order to support their jurisdiction. In the case of the *Ocean Insurance Company v. Polleys*, we have decided, "that it is to the record, and to the record alone, that this court can resort to ascertain its appellate jurisdiction under the twenty-fifth section of the judiciary act."

The writ of error must therefore be dismissed for want of jurisdiction.