

Bristol & Skidmore

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M. & L. Railroad Co. v. The State -

George T. Lewis having been appointed Receiver of The M. & L. Railroad by The Governor of The State, in 1865, entered into the following contract,

Whereas I George T. Lewis Receiver of the Memphis, Clarksville & Louisville Railroad appointed by The Governor of Tennessee, and acting for said State, employed W. A. Bristol and Thomas J. Skidmore partners under the name and style of Bristol & Skidmore, to build certain Bridges on the line of said Railroad, and now owe them for building the bridges over the Tennessee River, Yellow Creek and a creek at Palmyra - a balance of Twenty one Thousand, five hundred and fifty nine dollars, and ninety cents payable as follows, to wit: Ten Thousand seven hundred and fifty dollars and ninety cents, payable on the 1<sup>st</sup> day of December next, Three Thousand six hundred and six dollars and 33 $\frac{1}{3}$  cents, payable with interest from the 1<sup>st</sup> of November 1866, on the 1<sup>st</sup> day of February 1867, Three Thousand six hundred and six dollars and 33 $\frac{1}{3}$  cents, payable with interest from the 1<sup>st</sup> day of November 1866, on the 1<sup>st</sup> of March 1867, Three Thousand six hundred and six dollars, and 33 $\frac{1}{3}$  cents payable with interest from the 1<sup>st</sup> day of November 1866, on the 1<sup>st</sup> day of April 1867. Therefore in consideration of the premises and being anxious to secure the payment of said sum of money to said Bristol & Skidmore, I hereby pledge to them on behalf of the State of Tennessee, enough of



the receipts, derived from the earnings of said Rail Road to fully pay off, and discharge all of the above named debts, and I hereby agree with said Bristol & Skellernore that all three of said bridges shall remain their property, as a pledge and security for the payment of said debts, with authority to remove them upon the failure of payments on the part of myself as Receiver and agent of the state, This the 1<sup>st</sup> day of November 1866," signed "George J Lewis, Receiver Mumpkin Claims and Lawrence Rail Road,"

Marked "affirmed." W S Burrows Governor of New Jersey" The bill is filed against the Railroad Company - and S B Brown Receiver, the latter being the successor to Lewis, and states that the monthly income of the road, amounts to more than \$20,000, and after expenses \$30,000. That Lewis continued until 1867, and Brown as his successor, since that time, to receive, this monthly income, but that both of said Receivers have treated the claim of complainants with indifference. The bill further alleges that the great public importance of this road have prevented them from asserting the strict legal rights of complainants, in taking possession of said bridges, and pulling them down and carrying them to other points, nor do they believe that they would be permitted to do so, and they therefore appeal to the courts to protect them, and enforce the payment of their demand, The bill prays that the said Brown be enjoined and ordered to pay into court the earnings and receipts of said road



That he be enjoined and decreed to give possession of said bridges to Complainants, and not to use the same without their permission and that they be permitted if necessary to tear down and carry away said bridges, and there debt be paid out of the earnings of said road also they pray for general relief.

To this Bill there appears a general demurrer, filed jointly in behalf of the Railroad Company and the State of Tennessee. This cause was heard before the Chancellor, at Chelaksville, on the foregoing pleadings - and he decreed in substance, as follows:

That Complainants should execute a bond with sureties, payable to the defendants, in the sum of Twenty four Thousand dollars, conditioned to pay all costs & damages for wrongfully running out the Injunction, and to refund the money to be paid with interest if the Court shall hereafter so order. That an Injunction shall issue enjoining and commanding the Receiver, Brown, to pay into the office of the C & M on the first day of each month two Thousand dollars, and the C & M was ordered to pay the same to Complainants - from which decree the defendants appealed, to this Court.

The conclusion of the pleadings, is open to just criticism.

If the defendant Brown was ever served with process, or otherwise brought into Court the record fails to show it, he put in neither plea answer or demurrer, nor was there any process taken against him.

The State of Tennessee was not made it be, without  
 Legislative permission made a defendant to this or any  
 other suit, and we have been refused to do such per-  
 mission, besides the state was not sought to be made  
 a party to the original bill, and we are at a  
 loss to know, & what authority, the court allowed  
 a Demand to be filed in its name. Certainly  
 the Receiver had no power, to file a Demand in its  
 name, nor bring it into court, nor had the District  
 attorney any such right, we therefore must order  
 the demand to be stricken out so far as it  
 relates to the state, The question then comes  
 up, on the original bill against Brown and the  
 Railroad Co, and the Demand of the latter -

No pro confesso was taken as to Brown, at  
 the November term 1868, <sup>the demand was overruled and</sup> a decree was entered  
 allowing the defendants under the joint rules  
 to answer, and an order made upon the  
 Receiver to pay into court, \$2000 per month  
 which amount was to be paid over to the Comptroller  
 upon giving bond to refund, and <sup>presently</sup> an  
 appeal is taken, Now the law is imperative  
 that the state shall as first mortgage be paid  
 the amount of the interest due in enclosed bonds -  
 and here before the amount due, was made known  
 or any effort made to ascertain it, And before a  
 reference had been taken, to ascertain whether the  
 monthly payment of \$2000 into court, was not tending  
 upon the money, the state had reserved by the original  
 contract, to be applied to accruing interest, and  
 for which purpose the Receiver had been appointed  
 - it is decreed to the complainants -

It would certainly be a



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now proceeding, on a bill, filed for the specific performance of a contract, to decide that the contract should be performed, before the case was at issue, and was before one of the parties, had been duly executed with summons, or had put in either a plea answer or demurrer, to the bill, and then decide, which is final in its character - is made upon the execution of a bond - by the complainants, to refund, if the court should thereafter decide, to that effect,

The important questions presented, by the facts of this case, are two - can the State, the City, the Railroad Companies - or receiver, be allowed to pop off on the conclusion of the pleadings,

We therefore remand the cause to the Chancery Court, and order the demand filed on behalf of the State to be struck out,

with leave to the complainants to amend their bill, so as to make all proper parties - and have an answer or joinder as to each,

We are inclined to the opinion that the Receiver who made these contracts should also be a party - and required to answer,

We think the decree ordering the Receiver to pay into Court \$2000 per month void, because, he was not before the Court either by summons, or by plea answer or answer, and also erroneous, for other causes reverse the same

Just

Specimen of the Court  
Not to be published  
Ever

Ever