

**McNulta Vs. Lochridge**

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**Court :** US Supreme Court

**Decided On :** Oct-26-1891

**Appeal No. :** 141 U.S. 327

**Appellant :** McNulta

**Respondent :** Lochridge

**Judgement :**

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U.S. Supreme Court McNulta v. Lochridge, 141 U.S. 327 (1891)

**McNulta v. Lochridge**

**No. 1324**

**Submitted October 13, 1891**

**Decided October 26, 1891**

**141 U.S. 327**

*ERROR TO THE SUPREME COURT*

*OF THE STATE OF ILLINOIS*

## SYLLABUS

Whether a person holding the office of receiver can be held responsible for the acts of his predecessor in the same office is not a federal question, but a question of general law.

A receiver of a railroad, appointed by a federal court, is not entitled under the Act of March 3, 1887, c. 373, 3, 24 Stat. 552, 554, to immunity from suit for acts done by his predecessor, without previous permission given by that court.

An adverse judgment of a state court, upon the claim of a receiver appointed by a federal court, of immunity from suit without leave of the appointing court first obtained is subject to review in this Court.

Actions will lie by and against a receiver for causes of action accruing under his predecessor in office.

This was a motion to dismiss a writ of error or affirm the judgment of the court below upon the following state of facts:

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In July, 1887, Lochridge, the defendant in error, began two suits in the Circuit Court of Christian County, Illinois, against McNulta, the plaintiff in error, as receiver of the Wabash, St. Louis and Pacific Railway Company, to recover damages for the death of James and Mary E. Molohon, alleged to have been occasioned by the negligent management of an engine at a public crossing. At the time the cause of action arose, Thomas M. Cooley was receiver of the road under an order made by the Circuit Court of the United States for the Southern District of Illinois in a suit to foreclose a mortgage upon the road. Judge Cooley having resigned his receivership, plaintiff in error, John McNulta, was appointed his successor, and was in possession of and operating the road at the time the suits were brought. Demurrers were interposed to the declarations and overruled, and the suits were subsequently consolidated by agreement of parties, tried, and a verdict rendered

in favor of the plaintiff for six thousand dollars. This judgment was subsequently affirmed by the Appellate Court of the Third District, and again by the supreme court of the state. Defendant thereupon sued out this writ, and assigned as error first that the supreme court erred in holding that under the act of congress below cited, the plaintiff was entitled to maintain the action when it appeared from the record that McNulta was not the receiver when the cause of action accrued, and second in holding that under said act, McNulta could be sued as receiver with respect to any act or transaction which occurred before his appointment without previous leave of the court of the United States by which he was appointed. Defendant in error thereupon moved to dismiss upon the ground that no federal question was involved.

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MR. JUSTICE BROWN, after stating the facts as above, delivered the opinion of the Court.

The substance of the first assignment of error is that under the act of March 3, 1887, plaintiff was not entitled to maintain a suit against McNulta, as receiver, for a cause of action which accrued when the road was in possession of and operated by a former receiver. This is clearly not a federal question, but a question of general law, *viz.*, whether one person holding the office of receiver can be held responsible for the acts of his predecessor in the same office. The substance of the second assignment is that the Supreme Court of Illinois erred in holding that such suit could be maintained against the present receiver for the acts of his predecessor without the previous leave of the court appointing him.

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(1) Plaintiff in error relies in this connection upon the act of congress of March 3, 1887, c. 373, 24 St. 552, determining the jurisdiction of the circuit courts, which provides, in section 3, that

"every receiver or manager of any property appointed by any court of the United States may be sued in respect of any act or transaction of his in carrying on the business connected with such property without the previous leave of the court in which such receiver or manager was appointed."

It is difficult to see what right can be claimed by the receiver under this act. The right he claims is immunity from suit without the prior leave of the court appointing him, but this is a right not given by the statute, but in obedience to a general and familiar principle of law recognized by this court in [Davis v. Gray](#), 16 Wall. 203, and [Barton v. Barbour](#), [104 U. S. 126](#) . The right conferred by the statute to sue without the prior leave of the court is not given to the defendant, but to the plaintiff, and the only question which could properly arise under the act in this case is whether the receiver so sued could be held liable for the acts of a prior receiver. The act does not deprive any one of the right to sue where such right previously existed, but gives such right in certain cases, and it was for the court to say whether the plaintiff's cause of action fell within the statute or whether the defendant was entitled to the exemption given him by the general law. Had the supreme court of Illinois decided that under this act the defendant could not be sued without the prior leave of the federal court, the plaintiff might doubtless have obtained a writ of error from this court upon the ground that he had been denied a right given him by a "statute" of the United States, (Rev.Stat. 709), but it does not follow that the other party is entitled to the same remedy. The case in this particular is analogous to that of [Missouri v. Andriano](#), [138 U. S. 496](#) , decided at the last term, in which we held that it was only the party whose right under a statute had been denied who was entitled to a writ of error to review the final judgment of the state court.

(2) But while we think that plaintiff in error is not entitled to immunity by virtue of the statute of 1887, we are authorized

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by Revised Statutes, sec. 709, to review the final judgment or decree of a state court where

"any title, right, privilege, or immunity is claimed under . . . any . . . authority exercised under the United States, and the decision is against the title, right, privilege, or immunity specially set up or claimed by either party under such . . . authority,"

etc. Now as McNulta was exercising an authority as receiver under an order of the federal court, and claimed immunity as such receiver from suit without the previous leave of such court, and the decision was adverse to such claim, he is entitled to a review of such ruling whether his claim be founded upon the statute or upon principles of general jurisprudence. We regard this as a legitimate deduction from the opinions of this court in [\*Buck v. Colbath\*](#), 3 Wall. 334; *Feibelman v. Packard*, [109 U. S. 421](#) ; *Pacific Railroad Removal Cases*, [115 U. S. 1](#) ; *Etheridge v. Sperry*, [139 U. S. 266](#) ; and *Bock v. Perkins*, [139 U. S. 628](#) . The motion to dismiss must therefore be denied.

(3) But as there was, for the reasons above stated, color for the motion to dismiss, we are at liberty to inquire whether there is any foundation for the position of the receiver in this case that he is not liable to suit without permission of the federal court, and we are of the opinion that there is not. The Act of March 3, 1887, declares that

"every receiver . . . may be sued in respect of any act or transaction of his in carrying on the business connected with such property, without the previous leave of the court in which said receiver or manager was appointed."

We agree with the Supreme Court of Illinois that it was not intended by the word "his" to limit the right to sue to cases where the cause of action arose from the conduct of the receiver himself or his agents, but that, with respect to the question of liability, he stands in place of the corporation. His position is somewhat analogous to that of a corporation sole with respect to which it is held by the authorities that actions will lie by and against the actual incumbents of such corporations for causes of action accruing under their predecessors in office. *Polk v. Plummer*, 2 Humphreys 500; *Jansen v. Ostrander*, 1 Cowen 670. If

actions were brought against the receivership generally, or against the corporation by name "in the hands of" or "in the possession of" a receiver, without stating the name of the individual, it would more accurately represent the character or status of the defendant. So long as the property of the corporation remains in the custody of the court and is administered through the agency of a receiver, such receivership is continuous and uninterrupted until the court relinquishes its hold upon the property, though its personnel may be subject to repeated changes. Actions against the receiver are in law actions against the receivership or the funds in the hands of the receiver, and his contracts, misfeasances, negligences, and liabilities are official, and not personal, and judgments against him as receiver are payable only from the funds in his hands. As the right given by the statute to sue for the acts and transactions of the receivership is unlimited, we cannot say that it should be restricted to causes of action arising from the conduct of the receiver against whom the suit is brought or his agents.

The defense is frivolous, and the judgment of the supreme court of Illinois must be

*Affirmed.*

THE CHIEF JUSTICE and MR. JUSTICE GRAY, having been absent when this case was submitted, took no part in its decision.