

sel will not be heard, except at the request of the court; and errors not assigned according to this rule will be disregarded, but the court, at its option, may notice a plain error not assigned."

As the appellant did not file any assignment of errors when it prayed for its appeal, nor until long after the six months allowed for perfecting the appeal had expired, the errors assigned in this case must be disregarded under the rule. In view of the fact that this is the first case in which we have had occasion to enforce this rule, we have carefully examined this record, and are satisfied that no substantial error was committed by the court below, and that no injustice will be done by the application of the rule to this case, while the announcement that it will be enforced may promote its observance, and thus prevent injustice from its enforcement in the future. The result is that this court will not consider errors the assignment of which is not made and filed in the court below when the appeal or writ of error is allowed. The judgment below is affirmed.

UNION PAC. RY. CO. v. COLORADO EASTERN RY. CO.

(Circuit Court of Appeals, Eighth Circuit. February 6, 1893.)

No. 145.

1. APPEAL—TIME OF TAKING—CIRCUIT COURT OF APPEALS.

The United States circuit court of appeals has no jurisdiction in a case where more than six months intervene between the entry of judgment and the day on which the writ of error is sued out. *U. S. v. Baxter*, 51 Fed. Rep. 624, 2 C. C. A. 410, followed.

2. SAME—ASSIGNMENT OF ERRORS—TIME OF FILING.

The eleventh rule of the circuit court of appeals for the eighth circuit, requiring an assignment of errors to be filed with the petition for the writ of error or appeal, is mandatory. *U. S. v. Goodrich*, 54 Fed. Rep. 21, followed.

In Error to the Circuit Court of the United States for the District of Colorado.

Proceeding by the Colorado Eastern Railway Company against the Union Pacific Railway Company for the condemnation of certain land. Judgment for plaintiff. 41 Fed. Rep. 293. Defendant brings error. Writ of error dismissed.

John M. Thurston, Willard Teller, and H. M. Orahoad, (E. B. Morgan, on the brief,) for plaintiff in error.

L. M. Cuthbert, for defendant in error.

Before CALDWELL and SANBORN, Circuit Judges, and SHIRAS, District Judge.

SANBORN, Circuit Judge. The judgment in this case was rendered on November 23, 1891. The writ of error was sued out on June 14, 1892. This court has no jurisdiction of this case, since more than six months intervened between the entry of the judgment and the day on which the writ of error was sued out. *U. S. v. Baxter*, 51 Fed. Rep. 624, 2 C. C. A. 410; *Brooks v. Norris*, 11 How. 207;

Scarborough v. Pargoud, 108 U. S. 567, 2 Sup. Ct. Rep. 877; Cummings v. Jones, 104 U. S. 419; Mussina v. Cavazos, 6 Wall. 355, 360. Moreover, the assignment of errors was not filed until June 11, 1892, which was more than six months after the judgment was rendered. U. S. v. Goodrich, 54 Fed. Rep. 21, (decided this day.) The writ of error is accordingly dismissed.

MORRIS et al. v. LINDAUER et al.

(Circuit Court of Appeals, Sixth Circuit. February 16, 1893.)

No. 7L

1. FEDERAL COURTS — JURISDICTION — STATE STATUTES—FRAUDULENT ASSIGNMENTS.

The fact that the Michigan statute vests in the circuit court of that state the supervision of trusts created by assignments for the benefit of creditors does not exclude the jurisdiction of the federal circuit court, in cases of diverse citizenship, to entertain a suit to set aside a mortgage made in contemplation of the assignment, and covering all the assigned property, as in fraud of creditors. *Ball v. Tompkins*, 41 Fed. Rep. 486, applied.

2. SAME—DIVERSE CITIZENSHIP—TRUSTS.

Where a trustee is a party to an action in a federal court, brought under the diverse citizenship clause of the federal constitution, the citizenship of the trustee, and not that of the beneficiaries under the trust, determines the jurisdiction. *Knapp v. Railroad Co.*, 20 Wall. 124, followed.

3. FRAUDULENT CONVEYANCES—EVIDENCE.

S. began business in Michigan in August, 1888, with goods of the value of \$7,500. In the following spring he purchased more goods to the amount of \$4,500. April 19, 1889, he executed a mortgage on the goods in favor of his brother and others, and on April 22, 1889, executed a general assignment. At the time of the assignment there were only left goods to the value of \$5,000. No other disposition of the rest of the goods was shown. Shortly before making the assignment S. bought other goods, and just as the obligations therefor were falling due he borrowed a large sum from a bank, and then assigned. The brother had at various times and places made contradictory statements as to the amount S. owed him, and knew all about S.'s affairs, and had gone to various persons with S. for the purpose of getting S. credit. *Held*, that the mortgage was a fraud upon the general creditors of S., and was void as to the brother.

4. SAME—KNOWLEDGE OF GRANTEE—INNOCENT BENEFICIARY.

Where a mortgage is given to one person for the purpose of securing debts due to himself and others, with intent on the part of the mortgagor to defraud other creditors, it is valid as to an innocent beneficiary whose debt is an honest one, although the mortgagee himself is a party to the fraud.

5. SAME—KNOWLEDGE OF AGENT.

But such a mortgage is void as to one who, though innocent himself, procured the security through an agent who had knowledge of the fraud.

Appeal from the Circuit Court of the United States for the Southern Division of the Western District of Michigan.

In Equity. Bill to set aside a mortgage, brought by Max Lindauer, Adolph Lindauer, and Solomon Michelbacher against Victor Schoenfeld, Louis E. Morris, and Jacob Aarons. The circuit court entered a decree for complainants. Respondents appeal. Affirmed.