

Works Co. v. Ballou, 146 U. S. 517, 13 Sup. Ct. 165; Cattle Co. v. Frank, 148 U. S. 603, 13 Sup. Ct. 691."

It is further contended by the appellant that a corporation debtor does not stand on the same footing as an individual debtor; that, while the latter has absolute dominion over his own property, an insolvent corporation is a mere trustee, holding its property for the benefit of its creditors and stockholders, and that a federal court of equity may entertain jurisdiction to wind up its affairs in a suit brought by a simple contract creditor. This contention is declared in the above-cited cases to be at war with the notions which were derived from the English law with regard to the nature of corporate bodies.

"A corporation is a distinct entity. Its affairs are necessarily managed by officers and agents, it is true; but in law it is as distinct a being as an individual is, and is entitled to hold property, if not contrary to its charter, as absolutely as an individual can hold it. Its estate is the same, its interest is the same, its possession is the same. Its stockholders may call the officers to account, and may prevent any malversation of funds or fraudulent disposal of property on their part. But that is done in the exercise of their corporate rights, not adverse to the corporate interests, but coincident with them. When a corporation becomes insolvent, it is so far civilly dead that its property may be administered as a trust fund for the benefit of its stockholders and creditors, and a court of equity, at the instance of the proper parties, will then make those funds trust funds which, under other circumstances, are as much the absolute property of the corporation as any man's property is his." *Graham v. Railroad Co.*, 102 U. S. 148, p. 160.

Under the settled law applicable to the federal courts, a simple contract creditor is not a proper party to invoke the aid of a court of equity to make the corporate funds trust funds, and to wind up the affairs of an insolvent corporation, unless the ordinary jurisdiction of the court has been enlarged by legislative authority. The jurisdiction of the court below had not been so enlarged, and it cannot be supported by an appeal to the state legislation in question. For these reasons the petition of the appellant for a rehearing is overruled. It was determined by the court, and so announced, that, as the appellant had committed the first material error, the cause would be reversed at its cost. By mistake or oversight, the order as entered adjudged the costs against the appellees. The order of reversal heretofore entered will be so far modified as to adjudge the costs against the appellant, and in all other respects it will stand approved.

HAMNER v. SCOTT.

(Circuit Court of Appeals, Eighth Circuit. February 12, 1894.)

No. 336.

WRIT OF ERROR—FINAL JUDGMENT—ATTACHMENT.

An order quashing an attachment, and leaving the action still pending in the trial court, cannot be reviewed by writ of error, since it is not a final decision. *Standley v. Roberts*, 59 Fed. 836, distinguished.

In Error to the United States Court in the Indian Territory.

Attachment by James B. Hamner against J. S. Scott. The attachment was quashed, and plaintiff brings error.

G. B. Denison and N. B. Maxey (Gilbert W. Pasco, W. M. Harrison, and M. M. Edmiston, on the brief), for plaintiff in error.

W. T. Hutchings (R. B. Shepard and H. O. Shepard, on the brief), for defendant in error.

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

CALDWELL, Circuit Judge. The plaintiff in error, James B. Hamner, brought suit against J. S. Scott, the defendant in error, in the United States court in the Indian Territory, on certain promissory notes, and sued out an order of attachment in the action. On motion of the defendant, the order of attachment was quashed, and thereupon the plaintiff sued out this writ of error to review the order of the lower court quashing the attachment. The principal action is still pending in the lower court. An order quashing an attachment is not a final decision, within the meaning of the act of congress creating this court (chapter 517, § 6, 26 Stat. 826), and a writ of error will not lie to review such an order (Robinson v. Belt, 5 C. C. A. 521, 56 Fed. 328; Riddle v. Hudgins, 7 C. C. A. 335, 58 Fed. 490.) We may add that this is the rule in Arkansas, under the Code of Practice of that state, in force in the Indian Territory, and under which the attachment in this case was sued out. Didier v. Galloway, 3 Ark. 501; Heffner v. Day, 54 Ark. 79.¹ The adjudged cases in other states are not harmonious, but the weight of authority is that an order sustaining or dissolving an attachment is interlocutory, and not appealable, in the absence of a statute making it so. 1 Black, Judgm. § 36; Elliott, App. Proc. §§ 81, 88, and cases cited in note 3. The case at bar is distinguishable from that of Standley v. Roberts, 59 Fed. 836, in this: In that case there was a final decree upon all of the issues in the case between the parties to the appeal. As between them, there was a final and complete determination of the action upon issues which did not concern the other parties to the suit. In this case the main action between the parties to the writ of error is pending and undetermined in the lower court. The writ of error is dismissed.

ADKINS v. W. & J. SLOANE.*

(Circuit Court of Appeals, Eighth Circuit. February 12, 1894.)

No. 344.

REVIEW ON APPEAL—SPECIAL FINDING.

Where some of the facts are admitted by stipulation, and others left to be proved, and the court finds the issues for the plaintiff "on all the evidence," the finding is general, and the opinion of the trial court, in which the questions of fact and law are discussed, cannot be considered, in connection with the stipulation, as a special finding of facts, reviewable by the court of appeals.

* 14 S. W. 1090.

* Rehearing pending.