

interest in or concerning them. 5th: Any agreement that is not to be performed within one year from the making thereof."

Section 3800 of the Code of Georgia provides:

"That parol contemporaneous evidence is inadmissible generally to contradict or vary the terms of a valid written instrument."

It is contended, however, that under the circumstances of the case parol evidence is competent to change the character of the deed of 1882 from H. S. Wimberly to John R. Wimberly into a mortgage or deed of trust, under which H. S. Wimberly really held, as of right, the equity of redemption. If it is admitted that this was true at the time of the deed, still the subsequent transfer and assignment of 1886, in writing, by J. R. Wimberly to Mrs. Tarver, with the admitted consent, if not procurement, of Henry S. Wimberly, of the equity of redemption, and the acceptance by Henry S. Wimberly of Mrs. Tarver's note in payment therefor, would seem to have divested all right and title of H. S. Wimberly. If this be so, it is clear that the alleged rescission afterwards of this transfer of the equity of redemption cannot be set up by parol. It was an independent transaction in regard to the land, and the proposition to establish such rescission and the continued equity in H. S. Wimberly by parol is far from being a proposition to show by parol that an equitable interest was reserved to H. S. Wimberly at the time he parted with the legal title, or that the absolute deed then executed was intended to operate as a mortgage. If we go further, and admit, for the purposes of the case, that there is some equity of redemption still left in Henry S. Wimberly, still, as the validity of the debt of \$5,000 secured by the deed of J. R. Wimberly to Charles L. Flint, and now amounting to about \$9,000, and wholly unpaid, is admitted, then, under sections 1969 and 1970 of the Code of Georgia, which provide that a deed with a bond to reconvey passes the title to the vendee until his debt is paid, it is clear that without payment of the debt the said H. S. Wimberly can assert no title to the land in controversy cognizable either in a court of law or a court of equity.

The decree of July 25, 1893, appealed from, restraining J. F. F. Brewster, the New England Mortgage Security Company, and the Union Real-Estate Trust Company from taking out and having executed a writ of assistance on the decree of January 10, 1891, should be reversed, with costs, and the cause remanded to the circuit court for such further proceedings not inconsistent with the views herein expressed; and it is so ordered.

AMES et al. v. UNION PAC. RY. CO. et al.

(Circuit Court, D. Colorado. February 8, 1894.)

No. 3,013.

RAILROAD COMPANIES—RECEIVERS—CHANGING RULES AND WAGES.

The court will not confirm the action of the receivers of an insolvent railroad system in reducing the wages and changing the regulations for the conduct of its employes which were in force when the property was

turned over to the receivers, where the employes affected were not notified of the proposed changes, and given an opportunity to point out, before the receivers, any inequalities or injustice that will be caused by them.

In Equity. Petition filed by Oliver Ames, 2d, and others, receivers, against the Union Pacific Railway Company and others.

The receivers herein appear by petition, and state that, by their general order No. 1, they have retained in their employment all of the officers, employes, agents, and servants who had been theretofore in the employment of the corporations defendant, but that such employment had ceased, and a fresh engagement began, when the defendant companies went into their hands; that because of the general decline of the earning capacity of the company's system of railways, and of the task imposed upon them of conducting the insolvent trust estate in their care in as economical manner as possible, they investigated the rules, regulations, and schedules governing their employes prior to the time the companies came into their hands, as also the wages paid, and made a comparison with the wages paid upon other railway systems similarly situated, and found that the wages they paid were in excess of the prevailing rates paid for similar classes of labor in a like region of country. The receivers pray for an order sustaining them in their revision and rearrangement of the rules, regulations, schedules, and wages of the nonsalaried employes, as promulgated, and that the employes be directed to refrain from conspiring with intent to induce a strike upon the system of railways operated by the receivers.

J. M. Thurston, for receivers.

T. Fulton Gantt, John H. Croxton, and George L. Hodges, for defendants.

Before HALLETT and RINER, District Judges.

RINER, District Judge. In the matter of the petition filed by the receivers of the Union Pacific system in relation to certain proposed schedules affecting the employment of men engaged in the service of the various railway and telegraph lines composing that system, now in the hands of the receivers, we are of opinion that it is necessary to the proper and economical management of the property now under the control of the receivers to adopt and maintain rules, regulations, and schedules governing the conduct, employment, and establishing the wages of all persons employed in the service of the receivers, in and about the management, operation, and conduct of the business in relation to these railways and properties. It appears by the pleadings in this case that, prior to the appointment of the receivers, certain rules, regulations, and schedules, the result of negotiations between the managers and employes of the various railway lines entering into and composing the Union Pacific system, touching the matter set forth in the petition, were in force, and were recognized and acted upon by the employes and managers of the railway companies composing this system.

Our own view is, if the receivers deem it advisable and necessary to the proper and economical management of the properties in their hands that rules, regulations, and schedules different from those in force at the time the property came into their hands should be adopted, that a hearing upon the question of proposed changes thought necessary by the receivers be had, in the first instance, before the receivers; that the employes affected by any proposed

change be notified, and be given time and opportunity to point out to the receivers any inequality in schedules, or any injustice which they may think will be done them by any proposed change in the rules and regulations. If, after such negotiation and consultation, the receivers and employes are unable to agree as to any proposed rule, regulation, item, or items of the wage schedules proposed, let the matters of difference be referred to the court for final determination. If this course is pursued, the result, in our judgment, will be that after a full consultation and discussion of these matters, between the receivers and employes (meeting, as they will, in a spirit of fairness upon both sides, determined to do the right thing, under existing conditions), very little will be left to the determination of the court, in relation to this matter. This course not having been pursued in this instance, we deem it advisable to deny the prayer of the petition of the receivers; and an order to that effect will be entered in this district, and in the district of Wyoming.

SHWARTZ et al. v. H. B. CLAFLIN CO.

KERN et al. v. SAME.

(Circuit Court of Appeals, Fifth Circuit. December 23, 1893.)

No. 159.

1. DESCENT AND DISTRIBUTION—LIABILITY OF HEIRS—ABATEMENT.

Under Code Pr. La. art. 120, which declares that, upon death of a defendant pending suit, the suit shall not abate, but shall be continued against his heirs by notice served on them, but that judgment can only be given against each heir for his share of the inheritance, it is error to render judgment against all the heirs in solido on service of notice, but without appearance by them, or entry of default against them, or submission to a jury of any issue as to their heirship and responsibility.

2. ATTACHMENT—DISSOLUTION—INSOLVENCY—FEDERAL COURTS.

Under Rev. St. U. S. § 933, declaring that attachments in the federal courts shall be dissolved by any cause which would dissolve similar attachments in the state courts, an attachment is dissolved in Louisiana by an accepted cession of the attached property to creditors under the insolvency laws of that state.

3. SAME—PLEADING.

Such a dissolution of an attachment may be pleaded by the insolvents and by interveners who claim the attached property as purchasers prior to the cession, as well as by the syndic.

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

Attachment by the H. B. Claffin Company against H. Kern & Son. An intervention was filed by A. Schwartz & Sons. Plaintiff obtained a personal judgment. Defendants and interveners bring error.

Suit was brought by the H. B. Claffin Company against H. Kern & Son, in the circuit court of the United States, to recover \$21,728, due the plaintiff on certain notes. A writ of attachment issued, under which the marshal seized the stock of goods in the store formerly occupied by defendants. Schwartz & Sons were also made garnishees, as alleged debtors of Kern & Son. On the 23d of February, 1892, the day after the seizure, Shwartz & Sons filed a