

order, and do, as said receiver, respectfully decline to proceed further therein; and it is further ordered that, if any plaintiff or claimant in or under said garnishment action, notice, writ, or process shall thereafter further proceed therewith in said state court, such plaintiff or claimant shall not be granted leave nor allowed to file in this court any application or claim for payment of or with reference to said claim so set up in said state court or judgment thereon (if any rendered thereon), nor shall he be decreed or permitted to receive therefor from said receiver or through this court, in any manner, any wages or funds that at any time may be in the hands of said receiver, which may be due or belong to any alleged debtor in such garnishment proceedings, nor the payment of any costs in such proceedings incurred.

NOTE. The above order was subsequently so modified as to permit the copy to be filed with the officer serving the process, etc., to be an uncertified copy.

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RICHARDSON v. WALTON et al.

(Circuit Court of Appeals, Third Circuit. April 27, 1894.)

No. 15.

APPEAL—ASSIGNMENT OF ERROR.

Where error is alleged in the findings of fact embodied in a decree of a lower court, the assignment, to be entitled to consideration in the appellate court, should specifically and plainly point out the particular error alleged. *Bank v. Rogers*, 3 C. C. A. 666, 53 Fed. 776, followed.

Appeal from the Circuit Court of the United States for the District of Delaware.

This was a suit by Charles Richardson against Ephraim T. Walton and Francis N. Buck, former copartners, wherein the bill of complaint prayed that the articles of dissolution be declared to have been procured by fraud and duress, and that the same be reformed in accordance with the real value of the firm's assets at the time of said dissolution. The case is fully reported in 49 Fed. 888. The complainant now appeals from the decree of the circuit court.

S. S. Hollingsworth, Henry N. Paul, Jr., and Anthony Higgins, for appellant.

Benj. Nields and George Gray, for appellees.

Before DALLAS, Circuit Judge, and BUTLER and GREEN, District Judges.

DALLAS, Circuit Judge. The parties to this suit had been partners for a number of years, when negotiations to dissolve that relation were entered upon, which on July 13, 1885, resulted in the execution of articles of dissolution, by which the plaintiff sold to the defendants all his interest in the partnership business and property, except certain claims and accounts, at a price and upon terms therein set forth. On October 12, 1888, the plaintiff filed his bill to have these articles of dissolution declared to have been procured by fraud and duress, and for reformation thereof "in accordance with

the real value of the firm's assets at the time of the dissolution," which the complainant alleged was much greater than the value which had been placed upon them when the agreement was made.

There is no ground upon which the charge of duress can be supported. The principal question is, did the defendants perpetrate a fraud upon the plaintiff, by which he was led to enter into the contract in question? The allegation of the plaintiff is that the contract was in part based upon an estimate of the profits of the firm for the then current year, which estimate was accepted by the plaintiff under the belief that the defendants had no knowledge of the exact amount of those profits, whereas they were then fully and accurately informed of their amount, but designedly concealed their knowledge, and the fact that they were possessed of it, from the plaintiff, who, in consequence, agreed to accept, with respect to said profits, a sum much less than their true amount. The defendants admit that in the negotiations which led up to the contract the profits referred to were considered, and that they were involved in the agreement which was embodied in that instrument; but they assert that the estimation of their amount, which, after considerable discussion, was acquiesced in by both parties, was arrived at in good faith upon their part, and they positively deny that they then had any information upon the subject which they withheld from the plaintiff. The learned counsel for the appellant ask us to independently consider this question of fact, because, as they suggest, the circuit court made no finding upon it; but this suggestion is incorrect. That court, with reference to this matter, said:

"The burden of proof is upon the plaintiff. The bill charges fraud, and a reformation of the articles of dissolution is sought. To entitle the plaintiff to relief, the proof should be free from all doubts, and convincing; but they do not appear so to be, to us. Taking the proofs as a whole, this much can be safely said: That the evidence is not so clear and satisfactory as to justify a decree sustaining the charge."

Both as to law and fact, we concur in this statement. That the burden was upon the complainant to establish the fraud which he alleged, by clear and satisfactory proof, is unquestionable; and that he failed to do so, our examination of the record has entirely satisfied us. But, if this question of fact had been a doubtful one, this court would not have been disposed to review the finding of the court below with respect to it, in the absence of any assignment specifically pointing out, and indicating with particularity, the precise error alleged and relied upon. *Bank v. Rogers*, 3 C. C. A. 670, 53 Fed. 776.

What has been said is conclusive, and therefore it is not necessary to consider any other of the points which are dealt with in the opinion of the court below. The decree is affirmed, with costs.

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(April 30, 1894.)

PER CURIAM. Since the foregoing was written, attention has been directed to the circumstance that the statement quoted from

the opinion of the court below was not embodied in its decree. Consequently, what has been said as to the absence of a specific assignment of error is inapplicable. This, however, does not affect the judgment heretofore announced, inasmuch as this court did, for itself, examine the question of fact referred to.

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CLAP et al. v. INTERSTATE ST. RY. CO.

(Circuit Court, D. Massachusetts. June 5, 1894.)

No. 3,214.

RECEIVERS—BRANCH ROADS.

After the appointment of a receiver for a street-railway company, the court will not appoint a separate receiver for one of its branches, especially where such branch has ceased to be operated, by reason of the destruction of its power house.

In Equity. On petitions of Boston Safe-Deposit & Trust Company, trustee under mortgage of the Attleborough, North Attleborough & Wrentham Street-Railway Company, Charles Francis Adams, owner of certain bonds of the Interstate Street-Railway Company, and the General Electric Company, owner of certain shares of stock of the Attleborough, North Attleborough & Wrentham Street-Railway Company, for appointment of separate receiver in the suit of Harvey Clap and others against the Interstate Street-Railway Company.

William G. Roelker, for complainants.

E. W. Burdett, for complainant United Traction & Electric Co.

Gaston & Snow and Solomon Lincoln, for complainant Boston Safe-Deposit & Trust Co.

H. E. Warner, for complainant Charles F. Adams.

Charles H. Tyler, for complainant General Electric Co.

Walter H. Barney, for respondent receiver.

COLT, Circuit Judge. The only question properly raised by these petitions is whether the receiver, Cornelius S. Sweetland, shall be discharged from the possession and control of that portion of the railway lines of the Interstate Street-Railway Company known as the Attleborough, North Attleborough & Wrentham Street-Railway Company, and a separate receiver appointed to take charge of that property. The real controversy between these petitioners and the Interstate Company cannot be determined except upon proper pleadings and proofs. Whether the Interstate Company acquired a valid title to the Attleborough road, or whether the second issue of bonds by the company was in excess of the amount allowed by law, and other matters in dispute which are set out in the petitions and accompanying affidavits, cannot be decided by the court at this stage of the proceedings, but must await a full hearing according to the usual course of equity procedure. As the case now stands, I have simply to determine whether, in the exercise of a sound discretion, another receiver should be appointed to manage the Attleborough Branch. The office of a receiver is merely to preserve the property