to be dismissed, and the motion to dismiss is denied. Upon the merits, the essential facts of this case are the same as in Farmers' Loan & Trust Co. v. McClure, 78 Fed. 209, and for the reasons stated in the opinion in that case, which is filed herewith, the decree below is affirmed, with costs.

DODSON v. FLETCHER.

(Circuit Court of Appeals, Eighth Circuit. January 26, 1897.)

No. 827.

APPEAL—NECESSARY PARTIES—CITATION AND SEVERANCE.

All the parties to a suit or proceeding who appear from the record to have an interest in an order, judgment, or decree challenged in an appellate court must be given an opportunity to be heard there, before such court will proceed to a decision upon the merits of the case: and an appeal taken by one party only, without citation to or appearance by another party interested in the decree, will be dismissed.

Appeal from the Circuit Court of the United States for the Eastern District of Arkansas.

John Fletcher, for the motion.
J. D. Cook, opposed.

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

SANBORN, Circuit Judge. On March 7, 1896, the Wear & Boogher Dry-Goods Company, a judgment creditor of the Southwestern Arkansas & Indian Territory Railroad Company, filed a bill in the circuit court for the Eastern district of Arkansas against the latter corporation for the appointment of a receiver of its property, and for authority to such receiver to proceed with the construction of its railroad. On March 27, 1896, John G. Fletcher, the trustee for the bondholders secured by a deed of trust made by the railroad company on April 10, 1894, filed an intervening petition in this suit, in which he prayed that the trust deed might be foreclosed, and that the property of the railroad company might be sold, and its proceeds applied to the payment of these bonds. On April 13, 1896, T. M. Dodson, the appellant, filed his petition in intervention in this suit, in which he alleged that on December 4, 1895, he made a contract with the railroad company for the construction of its railroad by means of which he acquired a lien for $12,054, which was still due to him upon his contract; and prayed that his lien might be declared to be superior to that of all the other parties in the suit. On April 30, 1896, Fletcher, the trustee for the bondholders, answered the petition of Dodson, denied the existence of his lien, and prayed that the lien of the trust deed might be found to be superior to that of all other parties to the suit. The question presented by the intervening petition of the appellant was heard upon the merits by the court below, and an inter-

locutory decree was entered, to the effect that he had a valid claim against the railroad company for $12,054.90, which should be paid out of the assets of the company as other claims of the same class were paid, but that he had no lien upon the property of that company superior to the lien of the trustee, Fletcher. From this decree Dodson appealed, and caused a citation to be issued against John G. Fletcher alone. Fletcher moves to dismiss this appeal upon the ground that neither the railroad company nor the judgment creditor has been cited to the hearing of this case. The appellant meets this motion with a voluntary appearance in this court of the railroad company and of the receiver who was appointed by the court below in the main suit, but no citation has been served upon the judgment creditor, the Wear & Boogher Dry-Goods Company, nor has that company appeared in this court.

All the parties to a suit or proceeding who appear from the record to have an interest in the order, judgment, or decree challenged in the appellate court must be given an opportunity to be heard there before that court will proceed to a decision upon the merits of the case. Masterson v. Herndon, 10 Wall. 416; Hardee v. Wilson, 146 U. S. 179, 181, 13 Sup. Ct. 39; Davis v. Trust Co., 152 U. S. 590, 14 Sup. Ct. 693; Gray v. Havemeyer, 10 U. S. App. 456, 3 C. C. A. 497, and 53 Fed. 174, 178; Farmers' Loan & Trust Co. v. McClure (decided by this court January 25, 1897) 78 Fed. 211. The reasons for this rule are that the successful party may be at liberty to enforce his judgment, decree, or order without delay against those parties who do not desire to have it reviewed, and that the appellate court may not be required to decide the same question more than once upon the same record. It is evident in this case that the Wear & Boogher Dry-Goods Company has a direct interest in the interlocutory decree which is here challenged. That decree, as it now stands, places the claim of the appellant upon a par with that of the dry-goods company, and adjudges that the two claims shall be paid pro rata from the proceeds of the property of the railroad company after the lien of the trust deed has been satisfied. If this court should reverse this decree, and enter one to the effect that the appellant has a lien upon the property of the railroad company paramount to that of the trustee for the bondholders, its effect would be to further postpone the claim of the dry-goods company to the payment of $12,054.90, which now stands upon an equality with it. The dry-goods company was therefore a necessary party to this appeal, and, as it had no notice of its hearing, the appeal must be dismissed, with costs. It is so ordered.

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

(Circuit Court, S. D. New York. January 27, 1897.)

1. PLEDGE OF SECURITIES—WRONGFUL REHYPOTHECATION.
A. pledged securities with B. as collateral, and B. wrongfully rehypothecated them, together with certain securities of his own, with C., to secure notes made by him to C. A., on learning thereof after B.'s insolvency, by taking up B.'s notes, acquired possession of all the securities, except a part of his own, which he left with C. as indemnity against claims, suits, and expenses. Both loans being overdue, A. sold B.'s securities, and applied the proceeds on B.'s notes. *Held*, that A. had a perfect right to do this, and did not thereby give B.'s receiver any right or claim on the securities left in C.'s hands.

2. SAME—JUDGMENT FOR CONVERSION.
Where a pledgee of securities has wrongfully rehypothecated them, and, after his insolvency, the owner has again obtained possession of them, by paying the debt for which they were rehypothecated, the fact that thereafter the owner recovers a judgment against the original pledgee for conversion of the securities does not vest the title thereof in such pledgee. If the judgment represents the securities, the rights of the parties will be protected by requiring the owner to indorse a suitable credit on the judgment.

This was a suit in equity, in the nature of a bill of interpleader, filed by the Union Pacific Railway Company, for its receivers, S. H. H. Clark and others, against Jacob H. Schiff and others, composing the firm of Kuhn, Loeb & Co., C. W. Gould, as assignee of the firm of Field, Lindley, Wiechers & Co. for the benefit of creditors, and Norman S. Dike, as receiver of the assets of the latter firm.

This cause has been several times before the court. The last time in June, 1896. 74 Fed. 674. The court then suggested that until the dispute with Kuhn, Loeb & Co. was adjusted, a decree establishing the right of the other parties would be a mere brutum fulmen. Pursuant to this intimation the counsel for the various parties agreed upon a settlement of the claims of Kuhn, Loeb & Co. and of Romulus R. Colgate. They further stipulated that pending the decision of the controversy between the complainant and the other defendants the securities in question shall be held by the Lawyers' Surety Company. The cause is now before the court for the sole purpose of determining the respective rights of the Union Pacific Company and of the defendant Dike, as receiver, and of the defendant Gould, as assignee, in the said securities. It is stated in the record that separate answers were filed by Kuhn, Loeb & Co., by Gould and by Dike. The answer of the latter is the only one submitted. None of the exhibits are returned, and but two are set out in full. As to the others counsel have agreed upon what is called "a summary or substantially accurate statement of their contents." The Dietz judgment declaring the assignment to Gould to be fraudulent and void appears not to have been offered in evidence, and the court is not advised as to the scope of the judgment or the grounds upon which it proceeds. This suit was commenced February 28, 1895.

E. Ellery Anderson, Artemas H. Holmes, and Holmes & Adams, for complainant.

Jasper W. Gilbert, Frederic A. Ward, James S. Bishop, and Alman Goodwin, for defendants Dike, as receiver, and Gould, as assignee.

COXE, District Judge. In May, 1891, the complainant, the Union Pacific Railway Company, borrowed from Field, Lindley, Wiechers & Co. $500,000 upon two promissory notes each for $250,000, dated, respectively, May 21st and May 22d, and payable six months after date. In July, 1891, the complainant borrowed $350,000 more from the Field firm upon similar notes. As collateral security for the