

istration of justice, it results that the failure to make the money was brought about by the injunction. If the parties had continued solvent for eight years, and the injunction had then been dissolved, but they had both failed the next day, before it was possible to obtain judgment according to the ordinary course of causes in court, there could be no doubt that the sureties would still be liable. The fact, if it be a fact, that one of the parties was solvent for more than a day after the injunction was dissolved, would not change the result, unless the condition of solvency continued so long as that the plaintiffs, by exercising reasonable diligence in the prosecution of their suit, could have obtained judgment. In this case the delay was reasonable so long as the equity suit was pending on appeal, and after that time the evidence all shows that the plaintiffs prosecuted their appeal with the utmost diligence. So much of plaintiffs' judgment against Atkinson & Co. as they could not make at the date of its recovery is a part of the damage growing out of the wrongful issuance of the injunction; and the evidence to explain the delay was proper, and I am of the opinion that judgment should stand.

Although counsel have not made a motion to set aside the judgment, they have argued with much earnestness the question last considered, and I have deemed it proper to state my views thereon.

MERCANTILE TRUST CO. v. MOBILE & S. H. RY. CO.

(Circuit Court, S. D. Alabama. June 20, 1896.)

MORTGAGES—FORECLOSURE—RIGHTS OF CREDITOR OF THE MORTGAGOR'S VENDEE.

After a decree of foreclosure and expiration of the time allowed for redemption, a judgment creditor of a vendee of the mortgagor had the land sold under an execution on his judgment, and became the purchaser. *Held*, that he had no interest in the land entitling him to claim a part of the proceeds of the foreclosure sale.

Bestor & Gray, for complainant.

Fred. G. Bromberg, for petitioner.

TOULMIN, District Judge. As I understand the case made by the petition, amendments thereto, and exhibits, it is substantially this: On April 15, 1895, the petitioner recovered a judgment in the state court against the Mobile & Spring Hill Railway Company for \$6,500. On May 6, 1895, it caused an execution to be issued on the judgment, and to be placed in the hands of the sheriff, which was by him levied on certain lands belonging to the defendant. The sheriff sold the lands under the execution, and at the sale the petitioner became the purchaser for the sum of \$300. On September 11, 1895, the sheriff executed a deed for the lands to the petitioner. Prior to said judgment, execution, levy, and sale, the defendant, the Mobile & Spring Hill Railway Company, acquired by purchase the said lands and the railroad franchises, rights, etc., of the Mobile & Spring Hill Railroad Company. At the time the Mobile &

Spring Hill Railway Company acquired said property, there was a mortgage on it, executed on June 1, 1886, by the Mobile & Spring Hill Railroad Company to M. P. Levy and F. Ingate, which was in full force and effect. On April 1, 1893, the Mobile & Spring Hill Railway Company executed a deed of trust on the railroad, franchises, and rights aforesaid to the complainant, the Mercantile Trust Company, as trustee, to secure certain bonds therein mentioned, which deed of trust, however, did not cover the lands in question. Subsequently the Mercantile Trust Company was subrogated to and acquired all the rights and remedies of said Levy and Ingate under the mortgage of June 1, 1886, which mortgage, it will be observed, included said lands. On June 11, 1895, a decree was rendered in this court foreclosing said mortgage, and ordering the property described therein to be sold to pay the debt secured by it. The amount of the debt then due was \$9,666.55. The Mercantile Trust Company was ordered to sell the property, and it was sold at public outcry on April 20, 1896. The deed of trust executed by the Mobile & Spring Hill Railway Company on April 1, 1893, was foreclosed by a decree of this court of February 29, 1896, and the property covered by said deed of trust ordered to be sold by Richard Jones, special commissioner, appointed for that purpose. The sale under this decree was also on April 20, 1896. The sale under the two decrees took place at the same time and place. They were made by one T. M. Le Baron, acting as crier for the Mercantile Trust Company, and for said Richard Jones, and all the property covered by the Levy and Ingate mortgage and by the said deed of trust was purchased by Lewis H. Rust for the sum of \$85,000, of which \$73,950 were paid to said Jones as commissioner, and by him paid into the registry of the court, and the balance of the purchase money, to wit, \$11,050, was paid to the Mercantile Trust Company, and by it applied to the satisfaction of the debt due to it under the Levy and Ingate mortgage, and by the company reported to the court. The court took no action with this division of the purchase money, and was not requested to take any action in the matter. On the reports of Commissioner Jones and of the Mercantile Trust Company, proper deeds were ordered by the court to be executed to the purchaser. At the time and place of sale, the petitioner, claiming to be the owner of the equity of redemption of the Mobile & Spring Hill Railway Company in and to the lands in question, tendered to the solicitors of the Mercantile Trust Company \$10,000 in cash in payment of "all the rights, privileges, franchises, and land granted to the Mobile & Spring Hill Railway Company, and described in the advertisement of sale," exclusive of the particular lands purchased by the petitioner at the sheriff's sale aforesaid, and demanded that said Mercantile Trust Company sell the property included in the Levy and Ingate mortgage, exclusive of the lands in question, and before selling said lands, and that said lands be sold separately, which demand was refused or disregarded. The petitioner now prays the court to decree that so much of the said \$73,950 be paid to it as equitably belongs to it as the owner of the Mobile & Spring Hill Railway Company's interest in said lands up-