the real estate of the company not embraced in the mortgage, just as if no receiver had been appointed, because the bond of one of the receivers was not filed until March 1st, and the bond of neither was approved until March 2d. If this was a case in which the rights of the parties depended upon the question of who first obtained actual possession of the property, we should feel that there was force in the appellants' contention. In Frayser v. Railroad Co., 81 Va. 388, relied upon by the appellants, the question of who had the better right was, in substance, a question of possession. It was a case of foreclosure of mortgage of a railroad, in which a receiver was appointed to take possession of all the property, moneys, books, etc., of the railroad company. A creditor had obtained judgment before the filing of the bill, and after the order appointing the receivers, but before they filed their bond, which was a prerequisite to their entering upon the performance of their duties, the judgment creditor had execution issued, and put it in the hands of the sheriff, which, under the statute of Virginia, gave him a lien upon all the personal property of the debtor, although not levied on nor capable of being levied on. Pending the qualification of the receivers, the court had ordered that the company should deposit the money in its treasury in a designated bank, to the credit of the cause. This money was derived from the earnings of the road prior to the time the bill was filed. The mortgagees had no right to any of the earnings prior to taking actual possession, and all earnings prior to taking possession on their behalf belonged to the company, and were liable to be taken by its creditors upon execution. It was held that the receivers were not, in any event, entitled to the earnings of the road accrued before the bill was filed. And in Edwards v. Edwards (1876) 2 Ch. Div. 291, cited by counsel for appellants, the question was whether the receivers had first obtained possession. It was a case of a bill to enforce a security, and for a receiver, filed by the holder of an unrecorded bill of sale. Under the act of parliament, unless the holder of the bill of sale had taken possession, or it had been recorded, it was null and void, as against executions, if the property remained in the possession of the party making the bill of sale. A creditor of the maker of the bill of sale had obtained a judgment before the filing of the bill, and, after the date of the order appointing the receiver, but before he had qualified himself to take possession by giving bond, the creditor levied his execution. It was held on appeal that it was the plain meaning of the order that the receiver was appointed conditionally upon his giving security, and before that he could not take possession; that both parties stood on their legal rights, and the judgment creditor had the better right, for the holder of the bill of sale had neither recorded it, nor had he taken possession. In Moran v. Sturges, 154 U. S. 256, 14 Sup. Ct. 1019, it was held that physical possession of the vessels in dispute was the test, solely because the admiralty court was not a court of concurrent jurisdiction with the state court, but, in matters of admiralty cognizance, had sole and exclusive jurisdiction, and withheld from seizing property sub-

ject to maritime liens only when in the actual physical possession of the officers of another court, and then only to avoid unseemly conflicts. In the case in hand, the property on which the judgment lien is claimed is real estate, of which neither the receiver nor the judgment creditor needed to take actual possession; and the decree appointing the receiver, dated February 26, 1894, by its terms took from the defendant corporation all its assets, and was accompanied by an injunction which restrained the officers and agents of the company from exercising any control over the property, assets, or books of the company, or from interfering in any manner with the control of the receivers, and enjoined all persons claiming to be creditors from instituting any suits, and from further prosecuting any suits theretofore instituted. The effect of a general receivership of a corporation, accompanied by such an injunction depriving it of the means of contesting suits instituted against it, has generally, and, we think, properly, been held to preclude creditors from prosecuting claims to judgment without leave of the court. The corporation is left in a situation which makes it inequitable that suits should be allowed to be prosecuted against it. 5 Thomp. Corp. § 6897. The injunction, by reason of section 720 of the Revised Statutes, forbidding injunctions to stay proceedings in a state court, could not prevent the appellants from prosecuting their suits and obtaining these judgments which were by default, but the circuit court can determine the effect which the judgments shall have as a lien upon property in its custody. Generally the better rule would seem to be that, when the court has jurisdiction, the order appointing a general receiver for the purpose of liquidation is an adjudication which operates as a sequestration of the property of the corporation, and especially is this so when it is plain that such is the intention and scope of the order; and in such cases to hold that the rights of parties are affected by the accident of whether the receiver is able on the instant to proffer his bond for approval is illogical. High, Rec. § 151; Beach, Rec. §§ 217, 623; Maynard v. Bond, 67 Mo. 315. The receiver is but the hand of the court itself. If the receiver appointed does not qualify, another is appointed. If he dies, his successor stands in his shoes. His appointment is only a convenient instrument in effecting the relief intended. McNulta v. Lochridge, 141 U. S. 327–331, 12 Sup. Ct. 11.

The sole question before us is the effect of the judgments under the proceedings in this case. The bill was not only to foreclose a mortgage, but was, as well, a general creditors' bill for the general liquidation of the company. There was no appeal from the order directing the receiver to take the property not embraced in the mortgage, nor from the injunctions prohibiting the prosecution of suits, nor from the decree directing the sale of all the property of the corporation, so that all those adjudications stand; and the appellants maintain that, notwithstanding those decrees are in force, there was error in denying to them a lien by virtue of their judgments. As the judgments were entered after the appointment of the receivers and the issuing of the injunction, we do not think it is a material fact that they were entered before

the receivers' bonds were perfected by approval. Maynard v. Bond, 67 Mo. 315. To hold that because there was property included in the scope of the bill, and affected by the receivership, which was not embraced in the mortgage, as to which creditors could obtain liens by judgments after the appointment of the receivers, would be to open the door to all judgments entered before the actual sale. We think the better rule is that the appellants having had no judgments at the date of the appointment of the receivers, but being simple contract creditors, they were represented in the suit by the defendant corporation, and their judgments were obtained pendente lite. Stout v. Lye, 103 U. S. 66. After obtaining their judgments they might, by leave, have come into the suit, and contended for such modification of the orders and decrees as they could show themselves entitled to, but they did not. They accepted what the court had done to protect the property of the corporation and administer its assets, and came in on the footing of creditors on whose behalf the bill was filed. They excepted to nothing, except that their claims were not allowed as liens by reason of their judgments. That is the one point we consider to be before us, and on that point we are of the opinion that the judgment was entered after the property was in custodia legis, and too late to obtain a lien. The decree appealed from is affirmed.

COWEN et al. v. ADAMS et al.

(Circuit Court of Appeals, Sixth Circuit. February 8, 1897.)

No. 367.

EQUITY PLEADING—DECISION—CONSISTENCY WITH PLEADING.

In a suit by the assignees of a legacy to cancel a receipt of payment thereof given by the legatee to the executors, the bill alleged the making of the will, the death of the testator, the assignment of the legacy to complainants, and the giving of the receipt to the administrators by the legatee, without any payment in fact of the legacy either to him or the assignees The bill further alleged that the receipt was given in pursuance of a combination between the legatee and the executors to defraud complainants. The executors denied any fraudulent combination, and the court found, on the evidence, that there was in fact no such combination, but held that the receipt was invalid, because obtained by the executors without payment of the legacy. *Held*, that there was no substantial inconsistency between this decision and the allegations of the bill.

On Petition for Rehearing. For report of prior decision, see 24 C. C. A. 198, 78 Fed. 536.

Before LURTON, Circuit Judge, SEVERENS, District Judge, and HAMMOND, J.

SEVERENS, District Judge. The defendants, Thomas M. Adams and E. C. Means, as administrators with the will annexed, have filed a petition for a rehearing of this case, upon the following grounds: