

involved." Undoubtedly, if different interests are involved by the bill to enjoin the action at law from those adjudicated in that action, the "jurisdiction of the circuit court must depend upon the citizenship of the parties." Where, however, the same interests are involved, or the bill relates to the same subject-matter adjudicated upon in the action at law, any party who has such an interest in the matter litigated in the action at law, which it is sought to enjoin, as permits him to sue therefor, has the right to file a bill to protect his interest; otherwise, in many instances, he would be without any remedy whatever. I am therefore of the opinion that the bill in the present suit is, to all intents and purposes, ancillary to the action at law pending in this court, and that, therefore, the lack of diversity of citizenship between the complainant and the city of Santa Rosa is not fatal to the jurisdiction of the court. I am also of the opinion that the fact that the complainant in this suit was not a party to the action at law can make no difference with respect to his right to maintain the present suit, provided that in other respects his status as a taxpayer gives him the right to sue. This last phase of the case was decided upon the motion of complainant for leave to intervene in the action at law. Having determined that the present action is in the nature of a defensive or supplementary suit, and ancillary to the action at law, the status of the plaintiff as a complainant again becomes important; and we find him here, as before, seeking to maintain this action on the ground that he is a taxpayer of the defendant the city of Santa Rosa. With respect to this feature of the controversy, I held that his status was not sufficient to entitle him to intervene in that case. If he could not intervene then, how can he maintain this action now? If I was correct in determining that he could not, by his petition, become an intervener in the original action, how can it be said that he may become an intervener by virtue of this supplementary bill? Is it not clear that my previous determination is equally applicable and conclusive against the right of the plaintiff to bring the present suit? No appeal was taken from my decision in the action at law, and the determination of the court in this respect remains unreversed. It may therefore be considered the law of this case, and is fatal to the motion for an injunction. The motion upon the order to show cause will therefore be denied, and the order to show cause discharged, and it is so ordered.

DILLINGHAM v. MORAN et al.

(Circuit Court of Appeals, Fifth Circuit. June 23, 1897.)

No. 556.

RECEIVERS—COMPENSATION—OBJECTIONS TO REPORT.

Where an order of court is made that a railroad receiver shall be paid a monthly salary for his services until he shall be discharged, and he continues to act as receiver, making quarterly reports showing the payment to himself of such compensation each month, and such reports are confirmed without objection, and no steps are taken by those interested to have him

discharged, objections afterwards filed to his reports and compensation, on the ground that he ought to have been discharged years before, should be overruled, and the compensation allowed as long as he continues to act.

Appeal from the Circuit Court of the United States for the Northern District of Texas.

George Clark and D. C. Bollinger, for appellant.
L. W. Campbell, for appellees.

Before PARDEE, Circuit Judge, and NEWMAN, District Judge.

NEWMAN, District Judge. Charles Dillingham was the receiver of the Texas Central Railway under order of the United States circuit court for the Northern district of Texas at Waco. He was appointed such receiver on the 4th day of April, 1885. On December 4, 1886, the court directed that the receiver, Charles Dillingham, be placed on the pay roll of the receivers (there was a joint receiver) at \$150 per month as an allowance upon his compensation as receiver in the cause, which allowance was to date from the possession of the receivers, and to continue while Mr. Dillingham gave his personal attention to the business of the company, until the further order of the court. On the 22d day of April, 1891, the railway property was sold. This sale did not embrace certain property which was not part of the railway proper, the parts not sold consisting of five lots, lands, notes, etc. At the time of the sale of the railway property, under a compromise arrangement, the receiver Dillingham was paid \$20,000. On August 28, 1891, at the close of the decree in confirming the sale, this occurs:

"That nothing in this decree contained is intended to affect, or shall be construed as affecting, the status of any pending or undetermined litigation in which said receivers appear as parties. Such litigation shall continue to determination in the name of said receivers, with the right reserved to said purchasers, should they be so advised, to appear and join in any such litigation; and nothing in this decree contained is intended to affect, or shall be construed as affecting, the receivership of any of the property of the defendant railway company other than the property so transferred to said purchasers, possession of which said property other than that so transferred is retained for further administration, subject to the orders of this court."

At the conclusion of a petition for a modification of the decree of confirmation, this appears:

"It is further ordered, adjudged, and decreed that nothing contained in this decree is intended to affect, or shall be construed as affecting, the receivership of any of the property of the defendant railway company other than the property so transferred to said purchasers; possession of which said property, other than that so transferred, is retained for further administration, subject to the orders of this court, in like manner as if this decree had never been entered or rendered."

Dillingham continued to act as receiver up to April, 1895, apparently, from the record, attending to such matters as were necessary to be disposed of in winding up the affairs of the receivership; and continued to draw and to pay himself the \$150 per month until April, 1895. After the railway was sold, Receiver Dillingham filed regular quarterly accounts for each quarter, ending, respectively, on the 1st days of April, July, October, and January, for the years

1891, 1892, and 1893, and no objection or exception was made to the same, and the special master, John G. Winter, reported favorably upon the same, and they were confirmed. In March, 1894, the receiver filed with Special Master Winter accounts for the quarter ending September, 1893, and after notice by the special master to counsel interested in the matter a hearing was had upon these accounts. Counsel for the Texas Central Railway Company and for the purchasing trustees objected to the payment by Dillingham to himself of \$150 per month for the months of April and May, 1893. In disposing of these objections the special master found that Dillingham had, since the sale of the railway property, continued to give, and was still giving, his personal attention to the management of the property in his custody, being all of the property of the defendant corporation not embraced in the sale of 1891. He also found that Dillingham had reported the \$150 per month in his accounts regularly since the order made in 1886; that these accounts had been regularly passed upon by the master, after due notice to counsel; and that there had been no objection by any one at interest until the objection then being heard. He found that the parties to the litigation had taken no steps to close the receivership, and had refrained from so doing pending the adjustment of the claims of the Trust Company and the Morgan Company to the property remaining in the hands of the receiver, and that they had, without objection, on full notice, acquiesced in the payment of the salary to Dillingham. He also found that Mr. McHarg, one of the purchasing trustees, had written a letter in March, 1894, to Receiver Dillingham, in which he had recognized the fact that the receiver was under pay until discharged. The special master also found that the objections to the allowance of this amount to Receiver Dillingham were not well taken, and that the receiver was entitled to be compensated for his services, and the responsibilities incident to his position as a bonded officer of the court, and he therefore allowed the items objected to, to wit, two items of \$150 each, paid to Receiver Dillingham as salary for the months of April and May, 1893. He also found that the parties at interest, the Morgan Company, the Trust Company, and the Texas Central Railway Company, had made no objection to the compensation of Receiver Dillingham, although duly advised thereof. The special master further found that the receiver was entitled to receive this compensation until the courts shall revoke the order allowing the same. Similar objections were made to the allowance of the special master to Receiver Dillingham of his salary for the months of May, July, August, September, October, and November, 1893. These objections were also overruled by the special master, stating in his report that as to these months he referred to the facts stated in his former report. The reports of the receiver, which embrace this same allowance to himself, were subsequently approved without objection up to April 1, 1894. The accounts from April, 1894, to April 1, 1895, it appears, were being heard by the special master on April 8, 1895, when an order was passed referring the same to Abner S. Lathrop as special master. The exceptions thus referred, together with an amendment, subsequently filed, at-