

be treated as abandoned. Like all other statutes of that kind and all practice of that kind, it is subject to any contingencies that may arise; and, if it cannot be heard on the very day when the 20 days expire, it may be heard at such other day as the chancellor may appoint, according to the rules and practice of the court. And if any event happen to postpone the day, such as the death of the parties or the like, or the removal of the case to the federal court, let us say that postponement would not affect the force of the stay order; and the necessary result of the filing of this petition for removal simply is that the defendants, by their own application to remove the case, have called into effect an act of congress which postpones the requirement upon the plaintiffs that they shall apply for an injunction, until the first day of the next session of the court succeeding the filing of the application for removal, and until that time the parties must be content with the postponement granted by the act of congress. The application to vacate the stay order must be denied. Ordered accordingly.

FARMERS' LOAN & TRUST CO. v. LONGWORTH et al.

(Circuit Court of Appeals, Ninth Circuit. October 4, 1897.)

No. 288.

1. APPEAL—PARTIES—VOLUNTARY APPEARANCE.

A party entitled to join in an appeal may do so by entering a voluntary appearance in the appellate court after the appeal has been perfected therein, without giving notice to the opposite party or the circuit court.

2. RAILROADS—PRIORITY OF LIENS—JUDGMENT FOR DAMAGES.

A judgment creditor whose claim originated in the negligent act of the railroad company's servant is not entitled to a preference over the holders of pre-existing liens.

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

Struve, Allen, Hughes & McMicken, for appellants.

Stratton, Lewis & Gilman, Frederick Bausman, and George M. Emory, for appellees.

Before GILBERT and ROSS, Circuit Judges, and HAWLEY, District Judge.

HAWLEY, District Judge. The appeal taken in this case was dismissed on the ground that the Northern Pacific Railroad Company was a necessary party to the appeal. *Trust Co. v. Longworth*, 22 C. C. A. 420, 76 Fed. 609. The facts of the case are there stated, and need not be here repeated.

After the dismissal the attention of the court was called to the fact, which had been overlooked, that after the appeal had been perfected in this court, and after the motion had been filed by the appellees to dismiss the same, and within six months from the entry of the judgment herein, the Northern Pacific Railroad Company, by its attorneys, entered in this court its appearance and consent to the appeal. Upon this ground a rehearing was granted. The argument in behalf

of appellees upon rehearing again called in question the right of the Northern Pacific Railroad Company to join in the appeal, and questioned its right to do so by a voluntary appearance in this court without notice to the appellees or to the circuit court. The granting of the rehearing necessarily disposed of that question adversely to the views contended for by appellees; and, inasmuch as no additional authorities have been cited, we deem it unnecessary to again consider that question. *Morrison v. Kuhn*, 26 C. C. A. 130, 80 Fed. 740.

The case, upon its merits, is disposed of by the principles announced by this court in *Farmers' Loan & Trust Co. v. Northern Pac. R. Co.*, 24 C. C. A. 511, 79 Fed. 227, and *Trust Co. v. Nestelle*, 25 C. C. A. 194, 79 Fed. 748, to the effect that a judgment creditor of a railroad corporation, whose claim originated in the negligent act of the corporation's servant, is not entitled to be paid in preference to the holders of pre-existing liens upon the corporation's property. This is the only question presented by the appeal upon the merits. Upon the authority of the previous decisions of this court, and authorities there cited, the order of the circuit court is reversed, with costs in favor of appellant.

UNITED STATES v. COFFIN et al.

(Circuit Court, D. Nevada. September 6, 1897.)

No. 625.

1. FRAUDULENT ASSIGNMENT—PRISONER AND HIS ATTORNEYS—SUFFICIENCY OF EVIDENCE.

On the day of his conviction of the larceny of a large amount from the government, a prisoner withdrew money and mortgages from a bank, where they had been deposited to indemnify the sureties on his bail bond, and, between the time of his conviction and sentence, assigned the mortgages to his attorneys and his wife, and paid the money to his wife. The evidence as to the value of the mortgaged property, the amount of fees due his attorneys, and whether the assignment to them was to secure, or in payment of, their fees, was very conflicting, and the entire transaction was surrounded with mystery. *Held* not sufficient to warrant a decree setting aside the assignments as having been fraudulently made to prevent recovery of the fine imposed as part of the sentence.

2. DEALINGS BETWEEN ATTORNEY AND CLIENT—BURDEN OF SHOWING FAIRNESS.

In any transaction between an attorney and client which is advantageous to the attorney, he is bound to show that it is fair, just, and equitable, and that the client was in a position to deal with him at arm's length.

Charles A. Jones, U. S. Atty.

Torreyson & Summerfield, for respondents Coffin and Woodburn.

Robert M. Clarke, for respondent Heney.

HAWLEY, District Judge (orally). This is a suit in equity to cancel and annul certain assignments of mortgages executed by respondent James Heney in favor of respondents Tremmor Coffin and William Woodburn, upon the ground that the assignments were made in fraud of the rights of the United States. A suit between the same parties, arising out of the same transaction, had been previously brought in the United States circuit court for the Northern district of California;