

AMERICAN LOAN & TRUST CO. v. CENTRAL VERMONT R. CO. et al.

(Circuit Court, D. Vermont. February 12, 1898.)

RECEIVERSHIPS—INDEPENDENT FORECLOSURE SUIT—LEAVE OF COURT.

An independent suit to foreclose a mortgage on property in the hands of receivers cannot be maintained, except by leave of court obtained in that cause. Such leave will not be denied arbitrarily, but only for legal unfitness for the purposes when and where sought.

This was a bill in equity by the American Loan & Trust Company against the Vermont Central Railroad Company and others for foreclosure of a mortgage.

Moorfield Story and Michael H. Cardozo, for plaintiff.

Benjamin F. Fifield and Charles M. Wilds, for defendants.

WHEELER, District Judge. This is a bill for foreclosure and sale brought against the mortgagors and receivers of the property in another cause. The receivers have pleaded their receivership, and other defendants have demurred. The plea and demurrer have now been argued. The possession of property by receivers under the appointment and order of a court in a cause is the possession of and for the court in that cause. No suit or proceeding touching the property can be maintained but in that court in that cause, or by leave of court obtained in that cause. This result follows from the nature and scope of the proceedings, is necessary for the purposes for which receivers are appointed, and is elementary. The statute which allows suits against a receiver, "in respect of any act or transaction of his in carrying on the business connected with such property," does not change this as to suits affecting the property itself. 25 Stat. 436, c. 866, § 3. The plea and demurrers to this bill as brought to institute an independent cause, without leave of court, although in the same court, must accordingly be sustained. Parties having claims upon the property have a right to prosecute them by suit which is said to be liable to be abridged, if leave of court must be had for that purpose. The leave is, however, necessary only for the orderly administration of justice, and is not to be denied arbitrarily, but only for legal unfitness for the purposes when and where sought. The right remains, and leave is to be granted according to the right and the proper adaptation of the proceedings. The plaintiff here has the right to proper proceedings for foreclosure of its mortgage upon the property. They may be properly had by intervention by bill or petition like this, for that purpose, in the original cause. It is therefore entitled to leave for that purpose. Plea and demurrers sustained, with leave to plaintiff to file bill in original cause.

LILIENTHAL v. DRUCKLIEB et al.

(Circuit Court, S. D. New York. February 11, 1898.)

1. FRAUDULENT CONVEYANCES.

A sale, though fraudulent and void as to creditors, is binding on the parties to it.

2. CREDITORS' BILL—GOOD WILL OF BUSINESS.

A creditors' bill extends to nothing which the creditors cannot reach, and hence does not require a finding by the master of the value of the good will of a business, which cannot be levied upon in satisfaction of their claims.

This was a creditors' suit by Clotilde Lilienthal against Charles A. Drucklieb and Julius C. Drucklieb. The cause was heard on exceptions to the master's report.

William H. Blymyer, for plaintiff.

Louis O. Van Doren and Henry B. Twombly, for defendants.

WHEELER, District Judge. This cause has been before considered by this court, and the liability of the defendants for property of Maurice Lilienthal, acquired in fraud of the rights of his creditors, adjudged and decreed. *Lilienthal v. Drucklieb*, 80 Fed. 562. It has now been heard on exceptions to the report of the master, to whom it was sent to ascertain the amount so received and retained away from the creditors. The property consisted of goods and dues of a store in New York in charge of Charles A. Drucklieb, as agent of Lilienthal, who lived in Paris. A large part of the goods was sold at once, and the avails were deposited in this court at the suit of creditors, and withdrawn on stipulation and order of court thereupon, by Charles A. Drucklieb. The defendants insist that what went to other creditors before this suit was well accounted for, and that more so went than the master has found and allowed. That they should not here be charged with what another creditor had previously obtained on account of the same fraud seems quite clear; but the question as to how much so went to other creditors, and how much was retained, has been determined by the master upon conflicting, and more or less convincing and doubtful, evidence, and his findings upon such evidence should not be disturbed without good cause, such as might set aside a verdict. No such cause appears here; on the contrary, the finding seems to be well warranted by the evidence. Charles A. Drucklieb claims that he was to receive 2 per cent. commissions on all sales as agent for Lilienthal, and not less than \$4,000 for the year from March, 1888; and that, having received only \$150 per month for but a part of the year, he should be allowed to retain the balance, \$2,380, out of the avails of these goods. The master does not find the agreement, and if it existed it would be superseded by the sale which, although fraudulent and void as to creditors, would be binding upon the parties to it. The plaintiff has excepted to the report because a value of the good will has not been found and stated. As this is a creditors' bill, however, it extends to nothing that they could not reach, and the good will could not be levied upon in satisfaction of