

the appellant purchased with notice of the defective title which the heirs of Bailey held, and that in all respects the appellant stands, so far as the lands in controversy are concerned, in the shoes of the heirs, and is not an innocent purchaser without notice. As the appellant took the lands in controversy charged with the payment of the debts of the estate of Bailey, and with full notice that they were so charged, the decree of the circuit court dismissing the appellant's bill was correct, and it is affirmed.

FIDELITY INSURANCE TRUST & SAFE-DEPOSIT CO. v. ROANOKE IRON CO.

(Circuit Court, W. D. Virginia. September 6, 1898.)

RECEIVERSHIP — FACTORS' INTEREST IN PROPERTY CONSIGNED — ATTORNEY'S FEES.

In a proceeding brought by the receiver of an insolvent iron company against certain brokers to determine their interest in a quantity of iron in their possession for sale under a contract with the iron company, it was adjudged that the brokers had title to the iron, but were ordered to account to the receiver, after disposing of the iron, for the net balance remaining after reimbursement of advances and expenses. *Held*, that the brokers were not entitled to deduct from such balance any sum for attorney's fees and expenses incurred in defending their title to the iron, either under a provision in their contract with the iron company allowing them "expenses incidental to distributing the iron," or on the ground that they were acting as agents in defending the title, or on the ground of damage caused by the injunction restraining them from disposing of the iron.

Seward, Guthrie, Morawets & Steele, for Crocker Bros.

John Douglas Brown and Scott & Staples, for Philadelphia Warehouse Co.

PAUL, District Judge. The question to be disposed of arises on the application of Crocker Bros., creditors of the defendant company, to have allowed them, out of the fund under control of the court, the sum of \$4,574.12 for expenses for counsel fees and attending the various hearings in the cause. Prior to and at the time of the appointment of the receiver in this cause, Crocker Bros., who were brokers in New York, had a contract with the Roanoke Iron Company, as agents, for the sale of said company's iron. Under the contract, the iron was shipped to Crocker Bros. on bills of lading in their name, was stored by them, and sold by them at their discretion; they advancing a stipulated proportion of the market price to the iron company, and accounting for the proceeds when the iron was sold, no control over these sales being reserved to the iron company. The contract contained this provision: "Account current will be rendered at suitable periods, and include proceeds of sales, payments on account, and any expenses of transportation, marine insurance, storage charges, or expenses of any nature incidental to distributing and delivering the iron." At the time of the appointment of the receiver, on the 25th of January, 1895, Crocker Bros. had in their possession, under their contract, about 6,000 tons of iron, 4,000

of which were stored upon the premises of the Norfolk & Western Railroad Company at Lambert's Point, Va., and 2,000 in the city of Roanoke, Va. On the 2d day of February, 1895, the receiver, at the instance of certain supply lien creditors, filed a petition stating substantially the foregoing facts, making as parties defendant thereto said Crocker Bros. and persons claiming to be supply lien creditors. The cause was referred to a master, to take an account of the property, real and personal, of the Roanoke Iron Company, the liens thereon, and their priorities. As to the 6,000 tons of iron, the master reported that Crocker Bros. were to be deemed factors, who had made advances on the iron in their possession and had a factors' lien upon the same; which lien, however, the master reported, was subordinate to the lien given by a statute of Virginia to supply creditors. Code Va. 1887, § 2485. Crocker Bros. excepted to this finding of the master, and the exception was sustained, the court holding that Crocker Bros. held the legal and beneficial title to the iron, and that the iron company had a right to an account from Crocker Bros., and, on such account, a demand for the balance of money appearing due thereon,—the balance being the result after reimbursing the loans and payment of the expenses. It further determined: "When the iron is disposed of, Crocker Bros. must account with the receiver for the net balance which remains, and it will be applied by him to the payment of creditors according to their legal or statutory priorities." *Fidelity Insurance, Trust & Safe-Deposit Co. v. Roanoke Iron Co.*, 81 Fed. 439. In accordance with this decision, Crocker Bros. disposed of the iron, and rendered their account to the receiver, charging therein the sum of \$4,574.12, attorney's fees and expenses incurred in defending their title to the said 6,000 tons of iron against the claims of the supply lien creditors. This contention is based on, first, that clause of the contract which provides that Crocker Bros. shall be allowed "expenses of any nature incidental to distributing and delivering the iron." This is not an unusual provision in contracts of this character, and its purpose and scope are clearly shown by its terms. It contemplates the usual and ordinary expenses arising out of the business transaction in hand. There is nothing in the contract indicating that the parties contemplated that the title to the iron might be called in question, and Crocker Bros. required to defend their right thereto. It was not anticipated that the Roanoke Iron Company would become insolvent; that insolvency would be followed by the extraordinary proceedings attending the appointment of a receiver,—the marshaling of assets, and the ascertainment of debts and their priorities, with the litigation incident to conflicting claims and the contentions of creditors for the priority of their liens. It would be a strained construction of the contract to hold that attorney's fees and other expenses incurred in litigation of this character are embraced within the terms, "expenses of any nature incidental to distributing and delivering the iron."

Nor is the second ground taken in the argument, that Crocker Bros. were acting as agents or trustees of the iron company, and therefore entitled to charge their principal or cestui que trust with counsel fees expended in defending the title to the property, tenable. If they were agents or trustees for the iron company after the delivery of the iron, they were so only as to the surplus coming to the company after the