

90 Fed. xci.). The appellants, proceeding under the theory that they had 30 days within which to make the return, let pass the 30 days; and then, by an agreement between counsel, approved by one of the judges of this court, the return day and for filing the transcript was extended to 60 days from and after the date of citation. The original record appears to have been filed in this court on January 18, 1898, and a printed copy of the same was filed April 12, 1898. Under the act organizing this court, and the rules in pursuance thereof, appeals from interlocutory decrees are entitled to precedence. The appellants allowed all of last term to expire, and the case is only set down at this term on being reached in its regular order. On May 2, 1898, the appellees filed a motion to dismiss the appeal, because, since the rendition of the decree appealed from, the whole of the fund of \$4,954.67, the expenditure whereof was sought to be enjoined by bill in this cause, has been, by the city of San Antonio, paid out and expended in making repairs and corrections of defective work on the outfall sewers of said city; and it is now undisputed that, pending the delays in hearing this appeal, the fund sought to be protected by injunction, and to be kept in the city treasury, has been paid out and expended, and placed beyond the reach of the court. Under these circumstances, we are of opinion that the appeal should be dismissed—First, because the appellants have been negligent in prosecuting their appeal; and, second, because, since the fund sought to be protected and preserved has been paid out and expended, the matters presented by the assignments of error in this appeal have become abstract questions, the decision of which would be without profit to any of the parties in the case. *Mills v. Green*, 159 U. S. 651, 16 Sup. Ct. 132. Appeal dismissed.

CAREY v. ROOSEVELT et al.

(Circuit Court, S. D. New York. December 30, 1898.)

1. EXECUTORS AND ADMINISTRATORS — DEBTS OF ESTATE — FOLLOWING ASSETS AFTER DISTRIBUTION.

The assets of an estate are generally a trust fund for the payment of its debts, and may be followed, in equity, for that purpose, in the courts of the United States, into the hands of distributees.

2. SAME—JUDGMENT AGAINST ADMINISTRATOR—PRIVITY OF TRUSTEES OF LEGATEES.

A judgment in an action revived against executors or administrators c. t. a. after they have settled their accounts, and transferred the property to trustees under the will, is binding on such property in the hands of the trustees, where they have assumed the defense of the action, in the name of the administrators, for the protection and at the expense of the trust estate, with the acquiescence of the legatees.

3. SAME—COLLECTION OF JUDGMENT AGAINST ESTATE—LACHES OF CREDITOR.

A creditor of an estate, who was sufficiently diligent to obtain a judgment against the administrators on his claim, within the rules of law, cannot be charged with laches in that regard to defeat collection of his judgment.

In Equity.

This was a suit in equity by George C. Carey, as trustee, etc., against John E. Roosevelt and others, as trustees and legatees under

the will of Amos Cotting, deceased, to enforce payment of a judgment previously rendered against the administrators c. t. a. of said Cotting's estate. On final hearing.

Arthur H. Masten, for plaintiff.

George H. Yeaman, for trustees.

Latham G. Reed, guardian ad litem.

WHEELER, District Judge. This suit is brought against the administrators with the will annexed of Amos Cotting, and trustees and beneficiaries, to reach assets in the hands of the trustees for satisfaction of a judgment of \$6,221.90 against the administrators. The defendant John E. Roosevelt is the active and managing one of the two administrators, and also of the two trustees, with the assent of the others, respectively; and the defendant Katie T. Schermerhorn is the other of the two administrators, and one of the beneficiaries. The administrators settled their accounts, and transferred the assets, amounting to several hundred thousand dollars, to the trustees, before the revivor of the suit in which the judgment was recovered. Such assets are generally a trust for the payment of debts, and may be followed, according to the principles of equity, in the courts of the United States, for that purpose. *Telfair v. Stead's Ex'rs*, 2 Cranch, 407; *McLaughlin v. Bank*, 7 How. 220.

The principal question made is as to the effect of the judgment against the administrators. It has been made twice before on demurrers. *Carey v. Roosevelt*, 81 Fed. 608, and 83 Fed. 242. Upon them, Judge Coxe appears to have doubted about this; but to have concluded that the judgment would be good against those who took part in the defense, in the capacity of legatees. The case shows that the whole matter was in the charge of John E. Roosevelt, who defended the case, in the name of the administrators, at the outposts, for the protection and at the expense of the trust estate, with the acquiescence of his co-trustee and those concerned, having the assets to be affected in his control for that purpose. This would seem to conclude the estate in the hands of the trustees, according to the judgment of Judge Coxe upon the last demurrer. Some of the beneficiaries are infants, who have appeared by guardian ad litem. Their interests are, however, subject to the rights of creditors, in the same way as those of persons sui juris.

Laches is much relied upon as an equitable protection to the beneficiaries; but the plaintiff was sufficiently diligent to recover the judgment, within the rules of law, against the administrators, which would seem to be enough for that, and there is no fair question about the proceedings in this respect since. Decree for plaintiff.

GRAND TRUNK RY. CO. v. CENTRAL VERMONT R. CO.

(Circuit Court, D. Vermont. December 3, 1898.)

INTERVENTION—WHEN ALLOWED.

Where a common creditor had joined in an action against an insolvent, leave to intervene in foreclosure pending against the insolvent to defend against the mortgage will not be granted where the application is not founded on any statement of defense to the mortgages not set up by the mortgagor, or on any evidence in support of a defense set up by the mortgagor that could be introduced if the motion was granted.

In Equity.

John C. Coombs and W. H. Leonard, for the motion.

Elmer P. Howe, Henry Crawford, Michael H. Cardozo, Charles M. Wilds, and Benj. F. Fifield, opposed.

WHEELER, District Judge. This cause has now been heard on motion of the National Bank of Redemption, a common creditor, that has joined as plaintiff in the original cause, for leave to intervene in foreclosures pending herein, and defend against the mortgages. The application is not founded upon, nor accompanied by, any allegation or statement of any defense to the mortgages, or either of them, not set up by the mortgagor; or of any evidence, or that any exists, in support of any defense set up by the mortgagor, that might be introduced if this motion should be granted. According to the statements of counsel at the argument, the only defense for which foundation is known by them is that the mortgages are ultra vires. This defense arises upon the surface of the proceeding, and may be urged at the final hearing by any party allowed to be heard, as any party interested, apparently, in fairness, if not of strict right, should be. No reason is made to appear warranting granting the motion, with its consequent delay. Motion denied.

GRAND TRUNK RY. CO. v. CENTRAL VERMONT R. CO.

(Circuit Court, D. Vermont. January 27, 1899.)

INTEREST—CLAIMS IN RECEIVER'S HANDS.

Where property of an insolvent passes into the hands of a receiver, and, by order of court, payment of claims is stayed, interest is not allowed on such claims pending the stay.

In Equity.

Henry G. Newton, for the motion.

Chas. M. Wilds and Wm. A. Sargent, opposed.

WHEELER, District Judge. When the receivers were appointed, March 20, 1896, they were directed to pay claims for materials and supplies that had accrued within six months before. On May 29th, after, further payment was stayed for classification of the claims. No one moved for any modification of the stay till January 8, 1898. Since then the stay has been modified from time to time, according