

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

to the situation of the claims and earnings as shown by the reports of the receivers, so as to allow the payment of 25 per cent. of the face of the claims twice and 50 per cent. once. The claimants now move for a further modification of the stay, or an order for the payment of interest on the claims. This is resisted by the bondholders, because, the principal having been recovered, there is nothing remaining for the interest to follow as a foundation for its recovery (*Davis v. Harrington*, 160 Mass. 278, 35 N. E. 771); and because the requirement of payment would, as to bondholders, be inequitable. The stay was an order of court, and while operative neither the receivers nor any one could pay the claims; and while it was so in operation there could be no default of payment to furnish any foundation for interest in the nature of damages for the detention of the money. *Hauxhurst v. Hovey*, 26 Vt. 547. In *Thomas v. Car Co.*, 149 U. S. 95, 13 Sup. Ct. 824, this subject was considered, and a decree for the payment of interest on such a claim in priority to mortgage liens was reversed. In delivering the opinion of the court, Mr. Justice Shiras said:

"As a general rule, after property of an insolvent passes into the hands of a receiver or of an assignee in insolvency, interest is not allowed on the claims against the funds. The delay in distribution is the act of the law; it is a necessary incident to the settlement of the estate. *Williams v. Bank*, 4 Metc. (Mass.) 317, 323; *Thomas v. Minot*, 10 Gray, 263. We see no reason in departing from this rule in a case like the present, where such a claim would be paid out of moneys that fall far short of paying the mortgage debt."

This is such a case as that, and, according to those principles, interest on these claims cannot now be properly decreed. Motion denied.

CREDITS COMMUTATION CO. et al. v. UNITED STATES et al. SAME v.

DEXTER et al. SAME v. AMES et al.

(Circuit Court of Appeals, Eighth Circuit. December 7, 1898.)

Nos. 995-997.

APPEALABLE ORDERS—DENIAL OF LEAVE TO INTERVENE.

An order refusing leave to intervene in a pending suit, where such intervention is not essential to the preservation of the petitioner's rights, but such rights may be asserted in an independent suit, is not a final order from which an appeal lies. Such an order is, from the nature of the case, discretionary, and, since its effect is to refuse to permit the petitioner to become a party and to litigate his claims in that suit, it cannot conclude him as to such claims, though it may purport on its face not to be made in the exercise of discretion, but to deny such claims on the merits.¹

Appeals from the Circuit Court of the United States for the District of Nebraska.

¹As to finality of judgments and decrees for purpose of review, see note to *Central Trust Co. v. Madden*, 17 C. C. A. 238, and, supplemental thereto, note to *Prescott & A. C. Ry. Co. v. Atchison, T. & S. F. R. Co.*, 28 C. C. A. 482.