

Opinion of the Court.

GRANT v. PHENIX LIFE INSURANCE COMPANY.

GRANT and Another v. SAME.

ORIGINAL MOTION IN TWO CAUSES PENDING IN THIS COURT ON APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Submitted January 17, 1887. — Decided January 31, 1887.

In a suit for foreclosing a mortgage, it appearing that a receiver has been appointed of the mortgaged premises, and that the mortgagor, appellant, is unable to pay the cost of printing the record on appeal, and that there are rents and profits in the receiver's hands collected during the pendency of the suit, the court orders the receiver to pay to the clerk the sum estimated to be necessary to complete the cost of printing the record.

THE following motion was filed in these cases:

"The above appellant [Grant] moves the honorable the Justices of the Supreme Court of the United States, that Brainard H. Warner the receiver, appointed by the Supreme Court of the District of Columbia in Equity Cause 4291, be directed to turn over to the Clerk of this Honorable Court out of the rents and profits in his hands the amount of \$5500, for costs accruing or to accrue, in the hearing of the cause, and for counsel fees as set forth in the petition, for the following reasons:

"First. Because the rents and profits are not mortgaged to the appellee, and said appellee has no right nor just claims to the fund in the hands of the said Warner.

"Second. Because the Supreme Court of the District of Columbia in General Term, has once finally decided that said rents and profits belong to the appellant, and discharged a receiver for that reason, and turned over the property and funds to the appellant by the decree of said court.

"Third. Because at the time of the appointment of said Warner, the cause stood precisely as it stood on February 12, 1878, when the court discharged the former receiver, and because appellant was refused a hearing by the court below

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on said appointment which was made by an interlocutory order and not being continued in the final decree of June 16, 1883, said appointment was superseded thereby.

“Fourth. Because the appellee has delayed the cause for many years by violating the rules and practices of the court, and thereby has caused the destruction of the property and loss of the rents and profits.

“Fifth. Because without receiving the amount prayed for in his petition, appellant will not be able to properly present his case to your Honorable Court, and will thus be prevented from obtaining the right and justice to which he is entitled.

“Sixth. Because of many other manifest reasons appearing of record and set forth in the petition.”

Leave was granted to both sides to file briefs.

Mr. H. W. Blair for the motion.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

We find that the cost of printing the record in No. 165 has been \$1327.00
and that the estimated clerk's fees in the same case are 900.00

In all \$2227.00

Of this the appellant has paid :

1. To the printer \$552
2. To the clerk 400 952.00

Leaving a balance of \$1275.00

which the appellant represents himself as unable to pay, and the printer will not allow the requisite number of the printed copies to be delivered for use at the hearing until his claim is satisfied. The money in the hands of the receiver has been collected from the rents of the mortgaged property during the pendency of the suit. We, therefore, direct that there be paid by the receiver to the clerk of this court the sum of \$1275, to be by him used in payment of the amount now due for printing the record, and the amount of his own taxable fees in the

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case, not already paid by the appellant. A copy of this order may be certified to the court below so that it may be carried into effect by an appropriate order of that court upon the receiver.

The motion papers now on file do not show that the matters involved in the appeal in No. 1201 are of a character to make it proper to direct that the clerk's costs and the expense of printing the record in that case be paid by the receiver. Except as to the payment of clerk's fees and printer's charges in No. 165 as above, the motions are overruled.

*Motion granted in part and denied in part as to first suit ;
and denied as to second.*

WINCHESTER v. HEISKELL.

ERROR TO THE SUPREME COURT OF TENNESSEE.

Submitted January 25, 1887. — Decided January 31, 1887.

The court restates what was decided in *Winchester v. Heiskell*, 119 U. S. 450, and, on petition for rehearing, adheres to it.

THIS was a petition for a rehearing in the case decided in 119 U. S. 450-453.

Mr. B. M. Estes for the petitioner.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This petition is denied, but inasmuch as the petitioners think that the points on which they relied for a reversal of the judgment were not clearly understood, we will restate what was decided.

1. We held that, as the suit of *Townsend v. Jones* was pending when Townsend filed his petition in bankruptcy, and when he made his assignment to Winchester, the assignee, Winches-