

Statement of the Case.

MORAN v. HAGERMAN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE DISTRICT OF NEVADA.

No. 875. Submitted January 12, 1894. — Decided January 22, 1894.

Following *Maynard v. Hecht*, ante, 324, this case is dismissed for want of jurisdiction.

MOTION TO DISMISS. Moran Brothers filed their bill of complaint against William Wright, A. A. Watkins, Jerry Schooling, and others, in the Circuit Court of the United States for the District of Nevada, alleging that the Union Trust Company of New York was the mortgagee in trust of the Nevada and Oregon Railroad Company for the benefit of the holders of certain bonds of the said company, and had brought suit in that court to foreclose the trust deed or mortgage, which suit was then pending therein; that the complainants were holders of three hundred and ten of some six hundred bonds of \$1000 each, certified and issued by the trustee under said deed, and that the defendants each claimed to hold some of them; that the company had no right to issue the bonds to the defendants, and that as between complainants and defendants the former were entitled to priority in the distribution of the proceeds of the sale of the mortgage bonds. The bill prayed for an injunction against the transfer of the bonds held by defendants and a decree that the defendants were not entitled to participate or share in the money realized from the sale of the road. In the meantime the property was sold under the foreclosure suit and bid in by Moran Brothers. Defendants answered, and on final hearing a decree was passed as prayed for in the bill and applying the proceeds on the complainants' bonds only. From that decree the defendants appealed to this court, which at October term, 1889, dismissed the appeal as to some of the appellants, affirmed it as to others, and reversed it as to Wright, Watkins, and Schooling, and remanded

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the case to the Circuit Court for further proceedings to be had therein consistent with the opinion. *McMurray v. Moran*, 134 U. S. 150. Thereafter Schooling died, and Hagerman, his administrator, was substituted.

The mandate of this court was issued July 19, 1890, and was filed in the Circuit Court, November 3, 1890, and on February 2, 1891, the Circuit Court entered a decree in the cause, wherein it was adjudged that complainants holding the three hundred and ten bonds, and Wright, Watkins, and Hagerman, administrator, holding thirty-one bonds, "are entitled to have, and do have, their three hundred and forty-one bonds, mentioned in said bill of complaint, and the answer on file herein, paid out of the proceeds arising from the sale of the mortgaged premises, described in the said complaint, if the proceeds so arising are sufficient; and if such proceeds are not sufficient, then that said complainants and said defendants, A. A. Watkins, and J. C. Hagerman as administrator of the estate of Jerry Schooling, deceased, and John Wright, as administrator of the estate of James Webster, deceased, with the will annexed, share in the proceeds of said sale in proportion to the amount of bonds held by them respectively, and upon terms of equality with complainants." The decree then described how the three hundred and ten and the thirty-one bonds were held, and further adjudged that the said three hundred and forty-one bonds "were negotiated and sold to *bona fide* purchasers for value, and are valid and subsisting obligations and are unpaid, and a valid and subsisting charge and lien upon the railroad and property described in said bill of complaint, and are entitled to be paid out of the proceeds arising from the sale of said mortgaged property."

October 24, 1891, Watkins filed notice and petition for an order modifying the decree of February 2, 1891, so that there be inserted a provision to ascertain the amount due on the three hundred and forty-one bonds, and the amount of the proceeds of the foreclosure sale, and the costs of sale and suit, and the proportion of the proceeds properly applicable to the payment of the three hundred and ten bonds owned by complainants, and the thirty-one bonds owned by the defendants;

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and a further provision that upon the ascertainment and determination of said matter, the defendants have judgment and execution against complainants for the proportionate amount of the proceeds to which they were respectively entitled. The application was accompanied by affidavits, and the notice stated that the motion "will be made upon the grounds that said matters were omitted from the said decree by oversight, inadvertence, and mistake, and upon the further ground set forth and contained in the petition hereto annexed and served and filed herewith." The various proceedings were severally set forth in the petition, which also averred that after applying the money realized from the foreclosure and sale to the payment of costs of suit and sale the marshal paid the balance of \$367,234.55 to complainants, who received and retained the same; and that, in order to enjoy the full fruits and benefits of the decree and of the mandate of the Supreme Court, the Circuit Court should have referred the cause to a master, which, by inadvertence, was omitted from the decree. To the motion and petition complainants filed objections for want of equity; of plenary pleadings; of proper process; and that the term at which the decree of February 2, 1891, was entered had expired before the motion and petition were filed, and that for this reason the court had lost jurisdiction and control of the decree, and had no power to alter or modify the same. The court entertained the application and testimony was taken thereon; and upon hearing, on May 9, 1892, an order was made granting the petition and modifying and amending the decree accordingly, and referring the cause to a master to ascertain and report to the court the matters above mentioned, and reserving the cause for final decree upon the coming in of the report of the master. A bill of exceptions was settled by the judge of the Circuit Court, June 10, 1892, which contained the proceedings on the motion and the exception of complainants to the order of May 9. The master proceeded under the order and filed his report June 6, 1892, and no exceptions or objections having been filed thereto, a decree was entered September 6, 1892, in which the court found that the net proceeds of the sale were

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\$367,615.31, and were paid to complainants on the day of sale. The court also found the amount due on the bonds held by complainants and defendants and the proportions in which the net proceeds of the sale should be applied, and made application accordingly and gave defendants judgment for the respective amounts to which they were entitled. On November 3, 1892, complainants prayed an appeal to this court from the decree of September 6, 1892, which was allowed that day, and on the same day complainants filed their assignment of errors to the effect that the decree should have been given in favor of complainants and against the defendants "for the reason that the term had elapsed at which said original decree was made, and the said Circuit Court had lost jurisdiction of said suit and had no power or authority to modify or amend said original decree, or to make any order or decree in said suit in any manner affecting the rights of the parties herein."

Mr. W. E. F. Deal, Mr. Edmund Tauszky, and Mr. Horatio C. King for the motion.

Mr. Wheeler H. Peckham opposing.

MR. CHIEF JUSTICE FULLER, after stating the case, delivered the opinion of the court.

Complainants below, appellants here, contend that the Circuit Court had no jurisdiction because the decree of February 2, 1891, was a final decree, and the court had no power after the expiration of the term at which it was rendered to entertain the motion and petition and enter the order of May 9, 1892, and the decree of September 6, 1892; and further, that the court had no jurisdiction to render affirmative judgments in favor of the defendants against the complainants, because no cross-bill had been filed and no proceedings had or taken on which such judgments could properly be rendered against the complainants. On the other hand, it is insisted that the questions raised do not involve the jurisdiction of the Circuit Court in the sense in which the term is used in the act

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of March 3, 1891. Whether the decree of February 2, 1891, was a final decree; whether the objection that no cross-bill had been filed came too late; whether the court could proceed in a summary way on petition; whether appearance and objection on the merits waived alleged irregularities; and whether these or like matters might bring a case within the first class named in the fifth section of the act of March 3, 1891, c. 517, 26 Stat. 826, 827, we find it unnecessary to consider, as no question of the jurisdiction of the Circuit Court was certified to this court for decision, and therefore, for the reasons given in *Maynard v. Hecht*, ante, 324, the appeal must be

Dismissed.

MEDDAUGH v. WILSON.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

No. 10. Argued October 10, 1893. — Decided January 22, 1894.

It is a general principle of law that a trust estate must bear the expense of its administration.

Assignees in bankruptcy, although not in possession of the bankrupt's property, are nevertheless required to look out for the interests of all, and are entitled to compensation, the lack of possession being important only in determining the amount of the compensation.

A corporation in Michigan was the owner of a large and valuable real estate. Three successive mortgages on this property were created, and a large amount of corporation bonds secured by them were issued. Suits being begun for the foreclosure of these mortgages, a receiver was appointed by the court to take possession of and hold all the mortgaged property. The corporation was then adjudged to be a bankrupt. Assignees were appointed, who appeared by counsel in the foreclosure suits and contested them. The property remained with the receiver, and never passed into the possession of the assignees. Negotiations took place, looking towards a sale of the property and a reorganization, which contemplated that a certain proportion of shares in the reorganization should be delivered to W. In the course of the negotiations, the amount which the assignees were entitled to receive, and the amount which should be paid to their counsel, were determined, with the assent of all parties. W. agreed to pay this sum to D. for them out of the moneys to be received by him. These negotiations fell through. New negotiations then took