
Ogilvie et al. vs. Knox Insurance Company et al.

OGILVIE ET AL. vs. KNOX INSURANCE COMPANY ET AL.

1. The creditors of an indebted corporation may have the aid of a Court of Equity against such corporation and its debtors, to compel the collection of what is due to it, and the payment of the debt it owes.
2. Where a bill for that purpose is brought by some of the creditors and prosecuted to a decree, and afterwards other creditors get judgments, and are permitted, by the Court, to come in as parties, with the averment, that there are also other debtors of the corporation, who should be compelled to pay for their benefit, the Court cannot make a decree, settling the principle of the distribution, until the assets are collected, and the amounts received from the different classes of debtors ascertained.
3. A decree made before the funds of the corporation are collected, that all the moneys recovered, or to be recovered, shall be distributed among the original complainants, and the several persons who have filed their petitions to be made parties, and appointing a Master to state an account, is not a final decree in the cause.
4. If the original complainants appeal from such a decree on the ground that it is unjust to them, the appeal must be dismissed as premature.
5. The Court will not be in a condition to make a final decree, until all the facts upon which the rights of the parties depend are ascertained.

Appeal from the Circuit Court of the United States, for the District of Indiana.

Mr. Gillet, of Washington City, and *Mr. Judah*, of Indiana, for the Appellants.

Mr. Gookins, of Indiana, for the Appellees.

Mr. Justice GRIER. When this case came before us on a

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former occasion (see 22 How., 330,) the decree of the Circuit Court dismissing the bill was reversed, and the record remanded, with instructions to that Court to enter a decree for the complainants against the respondents, severally, for such amount as should appear was due and unpaid by each of them on their several shares of the capital stock of the Knox Insurance Company, and to have such other and further proceedings as to justice and right might appertain.

At the May Term, 1860, of the Circuit Court, a decree was entered, in conformity with the judgment of this Court, ascertaining the amount of the judgments, due by the Insurance Company to the several complainants, and the several amounts due by each of the stockholders, respondents to the company. At the next November Term divers other creditors of the Company filed their petitions, setting forth that they also had become judgment creditors of the Company, and praying to be made parties to the bill, and suggesting that there were other persons indebted to the Company "whose indebtedness ought to be paid for the benefit of the petitioners;" that the amount found to be due from those against whom a decree has already been rendered was insufficient to liquidate the claims of the petitioners and other parties entitled to participate in the distribution of said funds; and praying that a Receiver might be appointed to receive and collect from the persons so indebted the amounts due by them, respectively, &c., &c. The Court then appointed a Receiver, according to the request of petitioners. But before the funds of the Company were collected, on the 7th of December, the Court entered a decree that all the moneys recovered or to be recovered under the decree made at last term be distributed among the original complainants and *the several persons* who had filed their petitions, praying to be made parties, complainants, &c., &c., and appointing a Master to state an account, &c.

The appellants contend that this decree is erroneous and unjust to the original petitioners. This may possibly be found to be true when the proper time comes to have it reviewed. But the appeal as well as the decree, is premature. There is no final

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decree in the case. After the assets are all collected by the Receiver, so that the Master may ascertain the amount to be distributed, the question now proposed will be properly raised, and decided on exceptions to the Master's report. That report should state the amount of assets to be distributed, the amount collected from the original defendants, also the *other amounts* collected by the Receiver from persons not in the decree; whether the amounts collected from the parties respondent are sufficient to pay each of the original parties complainant? if not, how much to each; how much other assets have been collected by the receiver, and how much would be coming to each creditor on the hypothesis that all the assets are to be divided among all the creditors equally.

With these facts ascertained, the Court will be in a condition to make a final decree, which can be reviewed by this Court but not till then.

The appeal is therefore premature, and must be dismissed.

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1. Real estate being sold under a regular proceeding of the Circuit Court, an order of the same Court awarding process to put the purchaser in possession, is not a decree from which the tenant can appeal to this Court.
2. If the tenant had an agreement with the purchaser, which gave him the right to remain in possession, his remedy was a bill for an injunction, in which a final decree could be passed and an appeal legally taken.
3. The order of a Judge allowing an appeal, so far from being conclusive upon the Court, does not even imply that the Judge himself, has a settled opinion concerning the appellant's right.

Appeal from the Circuit Court of the United States for the District of Columbia.

The record brought up by this appeal showed that in 1862 a