CENTRAL TRUST Co. and another v. WABASH, ST. L. & P. RY. Co. and others.[1]

(*Circuit Court, E. D. Missouri.* May 1, 1885.)

RECEIVERSHIPS—ATTORNEY'S FEES.

Where, during the pendency of a receivership, counsel for the complainant present claims for professional services for allowance, they will not be allowed the full value of their services, but only a part thereof; and the balance will be allowed to stand until the litigation is disposed of, and the court can see whether or not the property in the receiver's hands will suffice to pay all expenses, and the court will then decide what final allowance should be made.

In the Matter of the Application of Messrs. Green, Burnett & Humphreys, for an allowance for professional services as attorneys for the petitioner in *Wabash & St. L. & P. Ry. Co.* v. *Central Trust Co.* and others.

Green, Burnett & Humphreys, pro se.

Wells H. Blodgett, H. S. Priest, and *Geo. S. Grover,* for receiver.

BREWER, J., (*orally.*) It is not because we think the counsel have not earned the amount reported by the master in their favor that we do not sustain this report in full; but we do not believe in the policy or propriety, pending a receivership, of making a large allowance to parties who are employed as officers of the court, or in looking after the interests of clients in that connection. They should wait until the matter comes to a close, and then their bills, as a whole, should be presented. The court can then look at them, and pass upon the question as to whether they are correct or not. It makes a great difference, practically, in the administration of affairs, whether parties present bills for two or three thousand dollars every three or four months, or at the end of the litigation for eight or ten thousand dollars. We do not mean that counsel shall go without compensation as the case progresses, because they cannot afford to; but still these intermediate allowances will always be small, and will not be in the way of a determination of what the services up to that time are really worth, or what they should be at the final disposition of the case. They will be simply in view of the necessities, so to speak, of counsel pending litigation; and while the master in this case recommends an allowance of $6,000, the order will be that these gentlemen be paid $2,000 on account. The matter will stand over until we come to the final disposition of the *Wabash Case,* and then all fees and claims will be presented, and it will be seen whether there are funds enough in the Wabash road to pay the expenses.

[1]Reported by Benj. F. Rex, Esq., of the St. Louis bar.

WOOLDRIDGE and others *v.* IRVING and others.

VALLEY NAT. BANK OF ST. LOUIS *v.* KLEIN and others.

(*Circuit Court, S. D. Mississippi.* November Term, 1884.)

1. ASSIGNMENT FOR BENEFIT OF CREDITORS—RESERVATION OF EXEMPT PROPERTY —PARTNERSHIP ASSIGNMENT.
   Where an assignment by a firm in Mississippi excepts from the property conveyed such portion of it as is exempt by law from sale under execution, as provided by the laws of that state, without designating what property is claimed, and whether it is partnership property or individual property, the presumption will be that the exemption was intended to be out of the individual property of each partner, and the assignment will not be void.
2. SAME—ATTORNEY'S FEES.
   A provision in an assignment that the assignee may, as part of the expenses of executing the trust, pay necessary attorney's fees, will not invalidate the assignment, unless such fees are to be paid for defeating an attachment.
3. SAME—PAYMENT OF FIRM DEBTS—PAYMENT OF PARTNER'S DEBTS.
   That the asssignment appropriates all of the assets belonging to the firm and to each individual member to the payment of the partnership debts, and, if any shall remain, then the remainder, whether arising from the partnership assets or that belonging to the individual members, to the payment of the individual debts of the assignors, will not render it void.
4. SAME—INTENT TO DEFRAUD CREDITORS.
   On examination of the circumstances, as disclosed by the evidence in this case, *held*, that the assignment was intended to defraud creditors, and was fraudulent in fact.
5. SAME—POWER OF ASSIGNOR TO EXECUTE ASSIGNMENT.
   It further appearing that the member of the banking firm who executed the assignment in this case had no authority to do so, *held*, that it was void *in toto*.

In Equity.

A. B. Pittman, for S. L. Wooldridge and others.

Catchings & Dabney, Buck & Clark, and *H. C. McCabe,* for Valley Nat. Bank.

Martin Marshall and *Miller, Smith & Hirsh*, for attaching creditors.

Shelton & Crutcher, Birchut & Gillaud, and *Nugent & McWillie*, for assignee and assignors.

HILL, J. These two causes are submitted together, upon bills, answers, exhibits, and proofs; the purpose of both suits being to have declared null and void, and canceled, an assignment and trust deed executed by said G. M. Klein, in his own name, and in the name of his father, said J. A. Klein, on the twenty-first day of November, 1883, upon the alleged grounds that said trust deed is—*First*, upon its face, fraudulent and void; and, *secondly*, that it was executed with the fraudulent purpose of hindering and delaying the creditors of said J. A. and G. M. Klein, as bankers and copartners, and as individuals. The answers deny the fraud charged, to which complainants have filed replications, and upon which a large volume of testimony has been taken and read upon the hearing, and will be referred to in considering the questions presented for decision.