

collusively, and for the mere purpose of defeating a removal. The bill, which, however, is not verified by oath or affirmation, does, indeed, allege that Cox was the owner of 100 shares of the common stock of the Atlantic & Great Western Railroad Company. But, in his affidavit filed in this court, he does not pretend that he ever was a stockholder in that company, and he now simply claims to be the holder of a scrip certificate (a copy of which he attaches to his affidavit) issued by the reorganization trustees. That certificate does not purport to have been issued to Cox. He is, it seems, the brother-in-law of James McHenry, the principal plaintiff and promoter of this suit. In his affidavit, to meet the charge of collusion, it was incumbent on him to state when he became the holder of this certificate; but upon this point he preserves a condemning silence, contenting himself with saying that "for a long time" prior to the filing of this bill he was a "bona fide shareholder of the defendant company." It is evident from the bill itself and otherwise that his scrip certificate is worthless, and never had any pecuniary value. Whatever Cox's rights may be, they are distinct and separate from those of the other plaintiffs, and, as we have seen, he has no interest in the trust for the bondholders, which, undoubtedly, is the substantial subject-matter of the bill. Under all the circumstances, then, we feel quite justified in regarding the joinder of Cox as a plaintiff as one of those "devices" to destroy the right of parties to remove their causes into the federal courts which Mr. Justice MILLER, in *Arapahoe Co. v. Kansas Pac. Ry. Co.*, 4 Dill. 283, so pointedly condemned.

4. The fourth reason assigned in support of the motion to remand is founded upon a misapprehension. The petitions for removal were presented to the president judge of the common pleas court, who approved the bonds, but declined making any further order.

5. Touching the fifth reason, we need only say that all the defendants over whom the court had jurisdiction did join in one of the removal petitions.

The motion to remand the suit must be denied; and it is so ordered.

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CENTRAL TRUST Co. and another v. WABASH, ST. L. & P. RY. Co.  
and others.<sup>1</sup>

(Circuit Court, E. D. Missouri. September 30, 1885.)

**RAILROAD MORTGAGES—PAYMENT OF EXPENSES OF NEGOTIATIONS BETWEEN BONDHOLDERS FOR THE PURPOSE OF EFFECTING AN ADVANTAGEOUS SALE AND REORGANIZATION.**

Where, while a railroad was in the hands of a receiver appointed in foreclosure proceedings instituted by bondholders, the different classes of bondhold-

<sup>1</sup> Reported by Benj. F. Rex, Esq., of the St. Louis bar.

ers entered into negotiations with each other, having for their object the sale of the road to the best advantage under the final decree, and its purchase by them, and the reorganization of the railroad company, and certain necessary expenses for advertising, etc., were incurred in the course of the negotiations, and an order of the court on the receiver to pay said expenses was asked by the trustees under a general mortgage; but it appeared that there was no surplus in the receiver's hands, and that it was not certain that the negotiations would have any advantageous result: *held*, that the order must be denied.

### In Equity.

Petition of the Central Trust Company and James Cheney, trustees under the general mortgage of the Wabash, St. Louis & Pacific Railway Company, asking for an order on the receivers to pay the expenses of certain negotiations between the general mortgage and collateral trust bondholders of said railway company, having for their object the sale of the mortgaged property to the best advantage when the final decree of sale is made, and a reorganization of said company. The negotiations have resulted in an agreement which has been signed or assented to by holders of general mortgage bonds amounting to nearly \$8,000,000, and by the holders of substantially all of the collateral bonds, and the expenses in question have been incurred by a purchasing committee named in the agreement for advertising and printing, and for engraving certificates to be delivered to the bondholders who are parties to the agreement.

*Wells & Blodgett*, for receivers.

*Butler, Stillman & Hubbard*, for petitioners.

BREWER, J., (*orally*.) The petition of the Central Trust Company in the *Wabash Railroad Case* for an order on the receivers to pay the expenses of certain negotiations, and of the preparation of certain certificates, etc., is denied. I doubt not that if this arrangement, which is contemplated, shall be carried out, and the sale and purchase made in pursuance thereof, these expenses will be a proper charge against the property, and to be paid out of the proceeds of the sale. If there was any surplus money in the hands of the receivers, perhaps there would be no impropriety in advancing the money for them; but as there is no surplus money, and as, also, there is no absolute certainty that these negotiations will be carried into effect and the sale and purchase made in pursuance thereof, I do not think it proper for us at present to make the order requested.

CLAPP v. NORDMEYER and others.<sup>1</sup>*(Circuit Court, E. D. Missouri. October 1, 1885.)***1. ASSIGNMENT FOR BENEFIT OF CREDITORS—POWER TO CHALLENGE PREVIOUS DISPOSITIONS OF PROPERTY.**

Where a debtor makes a general assignment for the benefit of his creditors, the assignee cannot challenge any previous disposition of his assignor's property unless expressly authorized by statute.

**2. SAME—REV. ST. MO. § 354—CONFESSION OF JUDGMENT—PREFERENCE.**

Where a firm who knew they were insolvent, with a view of making a total disposition of their assets, and applying them to the payment of certain creditors to the exclusion of others, and, in pursuance of a scheme entered into between them and the creditors they desired to prefer, confessed judgment in favor of such creditors and had judgment entered against them for the amounts due and executions issued and levied on all of their assets, and thereafter, but on the same day, made a general assignment, subject to said judgments and executions, of all their property, and the firm's assets were sold under said executions, and all the proceeds paid by the sheriff into the hands of A., the attorney of the judgment creditors, *held*, that said confessions of judgment and said general assignment are to be regarded as part of one instrument, and as together making one voluntary assignment for the benefit of creditors within the meaning of Rev. St. Mo. § 354, and that A. holds the proceeds of said sale for the benefit of all the creditors of said firm.

**In Equity. Creditors' bill. Demurrer to bill.**

The bill states that the firm of Nordmeyer & Schoen, the debtors referred to in the opinion of the court, were, on January 30, 1885, utterly insolvent; that they owed more than \$5,000; that their assets did not amount to more than half that sum, and that they had no individual assets; that, knowing they could not further prosecute their business and had not assets sufficient to pay all of their just debts in full, they determined to stop business and dispose of all of their assets to a part of their creditors; that, for the purpose of evading the statute of this state, to-wit, section 354, Rev. St. 1879, and to prefer the debts of the creditors whom they desired to pay to the exclusion of the complainants and other just creditors, said firm and the creditors whom they desired to prefer concocted a scheme by which said firm should confess judgments in favor of such creditors for the amounts due them, and have executions issued thereon forthwith, and all of their assets at once levied upon thereunder, and immediately thereafter, as a part of the same general scheme for the disposition of all of their assets as aforesaid, make a voluntary assignment in form, subject to said judgments and executions, to one Drabelle as assignee; that, in pursuance of said fraudulent scheme, said firm on said thirtieth of January, 1885, confessed judgments in favor of the creditors who were parties to the arrangement, and had judgments entered against them and executions issued thereon at once, and levied on all of their assets, and as soon as the sheriff had taken possession of their assets, they, on the same day, as a part of said scheme, made an as-

<sup>1</sup> Reported by Benj. F. Rex, Esq., of the St. Louis bar.