

"warmly enlisted and deeply interested" in the issue of the bonds by the Denver, Texas & Fort Worth Railroad Company, are the only averments to impeach the good faith and good judgment of the latter in favoring the exchange, and no facts are set forth from which it can be seen that their conduct is prompted by a purpose to disregard the interests of the stockholders whom they represent, or is calculated to violate their rights, although this is suggested by implication. If there were enough in the bill to show a real grievance on the part of the complainant against the Pan Handle Construction Company, the other defendants ought not to be dragged into a controversy between him and the Pan Handle Construction Company upon the theory that they are proper parties to a suit by the Pan Handle Construction Company to prevent a breach of contract between the Fort Worth & Denver City Railway Company and the Denver, Texas & Fort Worth Railroad Company. The two causes of action are distinct and unconnected, and the attempt to mingle them renders the bill multifarious. If the complainant is entitled to prevent his own corporation from making the exchange of its stock with the Denver, Texas & Fort Worth Railroad Company, and can obtain that relief, it is wholly immaterial to him what indebtedness is created or mortgage bonds are issued by the latter corporation, because he will not become one of its stockholders, nor will his own corporation become a stockholder. Until the complainant becomes an actual shareholder of the Denver, Texas & Fort Worth Railroad Company he is a stranger to its affairs. He cannot be permitted to introduce it into a controversy in which no decree can be obtained against it, and compel it to litigate one issue between him and his own corporation in which it has no interest, and another between it and the Fort Worth & Denver City Railway Company, in which neither he nor his own corporation have any interest. The demurrer is sustained.

GAZIN et al. v. NORTON et al.

(Circuit Court, E. D. Louisiana. March 23, 1889.)

BANKRUPTCY—ASSIGNEE'S COSTS AND EXPENSES.

Under Rev. St. U. S. § 5099, providing that the assignee in bankruptcy shall be allowed out of the money in his hands "all the necessary expenditures made by him in the discharge of his duty, and a reasonable compensation for his services," where creditors have in good faith brought suit against the assignee, and been defeated, and the estate is insufficient to pay both their costs and the costs and counsel fees of the assignee, the assignee is entitled to preference.

In Equity. Petition for rehearing on question of costs.

E. H. Farrar and *H. H. Walsh*, for petitioners.

Wm. Grant, for defendants.

PARDEE, J. In this case Nellie E. Gazin and some six others, all creditors of the Bank of Louisiana, of which E. E. Norton is assignee in bankruptcy, brought a bill against the said assignee, charging fraud, mismanagement, and neglect of duty on the part of the assignee in administering his trust; and praying discovery, a new accounting, and general condemnation of the assignee as a faithless trustee. The charges in the bill cover the entire bankruptcy proceedings, running through a period of 18 years, where the estate, nominally large, was composed of incumbered real estate and personal assets of doubtful value, and where there were many conflicting claims, and much confusion and litigation. The bill contains 39 closely written pages, the answer 14 pages, and there were 8 days spent in hearing evidence and argument before the master. The master fully investigated the record and evidence, and submitted an elaborate report; and thereafter the whole case was reargued and considered by the court on exceptions to the master's report; all resulting in the dismissal of the bill, with costs to be paid by complainants. By agreement of counsel, approved by the court, the compensation of the master was fixed at \$1,000, and was paid out of the estate, without prejudice to the future taxing of the same as costs. Considering these matters, it seems clear that compensation to assignee's counsel cannot be less than \$1,000. The petition for rehearing on the matter of costs has been filed, argued, and submitted, the petitioners claiming that, as the suit was brought for the general benefit of the estate, the costs thereof should be paid by the estate. On the hearing it was shown that the financial condition of the estate is as follows: The assignee has filed his final account, and prayed for a discharge, which matter is now pending; that the costs of finally closing the bankruptcy, in the way of court fees and other costs necessary in such cases, are unpaid; that the costs of the assignee in defending the suit of Gazin and others, and his counsel fees therein, are unpaid; that he has in his hands, to the credit of the estate, the sum of \$998.83, of which sum \$754.19 are devoted to the payment of unclaimed dividends, leaving a balance of \$244.64 subject to distribution by the court, in payment of costs and charges, which sum may or may not be increased by collecting the sum of \$1,000 heretofore paid out for the compensation of the master in investigating and reporting on the bill of Gazin and others, which sum of \$1,000 is a part of the costs, which the petitioning creditors seek to be relieved from. If the said \$1,000 should be collected, there will then be in the assignee's hands, subject to distribution, the sum of \$1,244.64,—an amount inadequate to pay the necessary costs of closing the bankruptcy, and the assignee's costs and counsel fees in the case of Gazin and others. I take it that where a suit is brought against an assignee in bankruptcy, and he vindicates himself in the suit, and is sustained by the judgment rendered, there can be no question but what his costs therein incurred, and the fees of his counsel in defending himself, are a legitimate expense, which should be paid by the estate. Where creditors dissatisfied with the management and administration of an assignee in bankruptcy bring a suit against him in good faith, which, if

successful, will bring a fund into court, although they may fail in the suit, I am inclined to the opinion that their costs incurred in such suit should be paid by the estate. Assuming, in this case, that the suit of Gazin and others was brought in good faith, the question presented is whether their costs are entitled to be paid out of the estate in preference to the legitimate and unquestioned costs and expenses of the assignee, where it is complained that there are not funds enough in the estate to pay both. The assignee is an officer of court, and where he is not in fault, but his action is sustained by the court, he is entitled to his costs, charges, and expenses, in preference to any and all other claimants. Section 5099, Rev. St., provides that "the assignee shall be allowed and may retain, out of money in his hands, all the necessary disbursements made by him in the discharge of his duty, and a reasonable compensation for his services in the discretion of the court." The petition for rehearing is denied.

CITY OF BOSTON v. CROWLEY.

(Circuit Court, D. Massachusetts. March 21, 1889.)

1. BRIDGES—LIABILITY FOR DEFECTS.

The city of Boston purchased the franchise and materials of a bridge at the entrance to its harbor, being empowered so to do by Acts Mass. 1831, c. 71, which provided that the city should always be "liable to keep said bridge and draw in good repair," and afford all necessary accommodations to vessels that have occasion to pass the same. By Acts Mass. 1876, c. 105, the city was authorized to do such acts as it might deem necessary to secure a bridge and draw which should be safe for the purposes of navigation, subject, however, to the provisions of other acts by which the approval of the board of harbor commissioners was required in all work authorized by the legislature of building any bridge, wharf, or draw over tide-waters. The said commissioners granted a license to the city providing for the widening of the said bridge, and the construction of a new draw, which was to be of a certain width. *Held*, that the city was liable for damages done to a vessel by being caught in the draw, the city having failed to maintain the draw of the required width.

2. MUNICIPAL CORPORATIONS—CIVIL LIABILITY FOR TORT.

In such case a civil action may be brought against the city in the federal courts for the damage done, though no such right of action is conferred by statute.

3. ADMIRALTY—JURISDICTION.

A court of admiralty has jurisdiction over damage done to a vessel on navigable water by a bridge.

In Admiralty.

T. M. Babson, Asst. City Sol., for appellant.

C. T. & T. H. Russell, for appellee.

COLT, J. This case is an appeal from a decree of the district court which held that the libel set forth a good cause of action against the city, and that the cause of action was within the admiralty jurisdiction of this court. It is admitted that the allegations of the libel and