

(CHAMBERS)

*In re*THE AMERICAN BRAKE SHOE AND FOUNDRY
COMPANY.1912
August 1.

PLAINTIFF;

and

THE PÈRE MARQUETTE RAILROAD COM-
PANY.

DEFENDANT.

*Railway Company—Receiver—Application to settle Claims arising before
Appointment of Receivers—Grounds for Refusing Application.*

THIS was an application, before Mr. Justice Audette in Chambers, for an order authorizing one of the Receivers of the defendant company to settle certain claims against the railway.

August 1, 1912. *Britton Osler* supported the application, on behalf of the defendant. No one appeared for the plaintiff.

AUDETTE, J. This is an application on behalf of the Receivers appointed herein for authority to settle and pay:—

1. Claims by injured employees, passengers and others, expenses incidental thereto, even though some parts thereof had been incurred more than six months before the appointment of the Receivers herein.

2. Bills due prior to the appointment of the said Receivers on contracts of the said Railroad Company for construction or repair work on bridges, buildings and other railroad property where the work is still in progress.

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3. Bills for witness fees, Court fees, lawyers' fees and other expenses in connection with the conduct of the legal department during said six months period.

4. Bills of newspapers for printing display advertisements of the Railroad company's service during said six months period.

5. Claims for personal injuries, injuries to live stock killed along the line of the railroad company, and for damage to property caused prior to the appointment of the Receivers, provided that in each such case the claim can be settled for an amount which in the judgment of the said Receivers is no greater than would be the expense of preparing and conducting a defence.

No such sweeping application can, indeed, be granted under the circumstances upon such scanty material as that filed in support of the application. An order of this kind would indeed vest the Receivers with such powers as would enable them to defeat the very spirit of the law where the property of a debtor is placed in sequestration in the hands of a Receiver to look after the interests of the creditors of the defendant.

By granting the prayer of the first clause, authority would be given to the Receivers to pay even prescribed claims,—claims extinguished by the statute of limitations.

With respect to the second clause no information is given to the Court whether the contracts in question involve large or small amounts.

With respect to counts 3, 4 and 5, suffice it to say that such claims cannot be paid and settled without giving the creditors an opportunity of showing cause and saying whether the judgment of the Receivers is good or bad.

All such claims as are mentioned in this application can only be paid upon submitting them to the Court

upon their merits, and allowing the creditors to show cause. Following another course and giving the Receivers *carte blanche* would be defeating the principle of law obtaining in the present class of cases.

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A similar order consecrating the same principle was made on the 16th February, 1906, by Mr. Justice Burbidge, in *Horn v. Père Marquette Rd. Co.* (*Vide Audette's Exchequer Court Practice*, 2nd Ed., p. 147).

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The application is refused.

Order accordingly.