

first time did the creditor Bennett seek to intervene and obtain control of the proceedings. He has not done what he was bound to do before he was entitled to the order; and, therefore, we are of opinion that the order is void.

Then, as to the disposition of this motion. It was suggested that Mr. Field had no retainer; we have carefully considered the circumstances under which he gave his notice of appeal; and, though perhaps he may not have had unqualified authority, yet he acted with propriety, and his action was ratified by the plaintiff, which ratification relates back to the giving of the notice of appeal, and entitles us to hold that the appeal was well launched.

It may be that, if Mr. Bennett brings his view before the estate, it will be adopted, and in that event this appeal may be prosecuted for the benefit of the estate. It may be, on the other hand, that the estate will not see fit to accept Mr. Bennett's proposition that the suit be prosecuted for its benefit; and, in that event, the estate having practically abandoned any interest in the fruits, or possible fruits, of this litigation, then there may be jurisdiction in the Judge to make an order (I speak now in the abstract). It is possible that there may be no jurisdiction to make an order in a suit that has gone as far as this; we offer no opinion.

The only point that we decide is, that Bennett, the intervening creditor, not having put himself in order in the manner indicated, the Judge was not entitled at that stage to make the order.

We will allow this motion to stand until a day to suit the convenience of the parties to enable this question to be brought before the creditors.

With regard to the costs of this motion, unless the Court that finally determines this appeal otherwise orders, these costs should be paid by the assignee, and may perhaps be recoverable by him under the bond given him by the creditor Bennett.