

HON. MR. JUSTICE MIDDLETON:—The appointment is attacked as improper because the receiver is not impartial and it is said is operating the line in the interest of the plaintiff and not adequately protecting the interest of the applicants, the prior mortgagees and the city.

Assuming this to be the case—the motion is misconceived. A receiver under a second mortgage is appointed to protect the mortgagee and those who hold the debentures for which this mortgage is security and so long as the mortgagor and second mortgagee are satisfied with his conduct the first mortgagee and the city cannot complain.

If either the first mortgagee or the city have any rights which they desire to assert they can take the proper proceedings to enforce such rights. The receiver, though in some sense an officer of the Court, is really a mortgagee's bailiff and his possession is in truth the possession of the second mortgagee. So long as the first mortgagee remains satisfied to leave the second mortgagee in possession or so long as the first mortgagee has not the right to take possession it cannot complain that the second mortgagee is making the most of its brief harvest time.

If any leave is necessary for any proceedings that either the first mortgagee or the city may desire to take, looking to the displacing of the second mortgagee and its receiver that leave is now given, and I hold these motions for the present so that if any order that may be made on any such motion is taken to an appeal leave may then be granted to take the order in question before the Appellate Court so that it may have an absolutely free hand in the premises.

I suggested to the parties the wisdom of consenting to a receiver being appointed to protect the interests of all concerned who would be impartial and would act on the advice of a committee on which all interests would be represented—subject to an appeal if any party dissented from the majority—or some similar arrangement—but this course is not assented to.