

before the 17th day of September A. D. 1908; and it is further ordered that the receivers be and they are hereby restrained and prohibited from attempting to take possession and control of the land, premises or property mentioned in these proceedings, and from interfering in any way with the rights, interests and possession of Manasseh O. Repp, the above named petitioner, in and to said land, premises and property until the further order of this Court.

John C. Motter.

OPINION AND DECREE.

The above case having been submitted to the Court, on a careful examination of the testimony, I am satisfied that the Virginia Consolidated Copper Company, the defendant corporation, in the early part of May 1908 ceased to be a going concern due to a financial complication and insolvency, and that from that time on up until the present hour has failed and has been unable to perform its covenants and agreements as lessee of the property by it leased from Manasseh O. Repp and Sarah E. Repp and described in a copy of said lease filed in the proceedings as exhibit No. 1.

By the terms of said lease the property became forfeited to said Repp and the lease ended.

In addition the evidence shows that the lease and property was actually surrendered to the lessors about that time. It is also claimed by the lessors that some additional machinery placed there by the Company for the purpose of operating the plant subsequent to the execution of the lease was forfeited to them by virtue of certain provisions in said lease, but I do not think such a claim should receive the sanction of the Court, when the rights of creditors are involved. According to the testimony the Company was and is largely indebted to various persons, quite a considerable amount of which indebtedness is for labor, and it would be grossly inequitable to permit this additional property to be regarded as liquidated damages, and that those other people receive nothing on their claims, which in my judgment are of a higher nature than the other. I will therefore direct it to be sold by the receivers and will designate in the decree about to be passed what property it is.

It is thereupon this 5th day of October, in the year nineteen hundred and eleven, adjudged, ordered and decreed by the Circuit Court for Frederick County, in Equity, and by the authority thereof, that the Virginia Consolidated Copper Company, the defendant in this case, has forfeited its right and interest in the lease hold property mentioned and described in the agreement an lease made April 7, 1904, by and between Manasseh O. Repp and Sarah E. Repp, his wife, and the said Company, and that said lease is hereby adjudged and decreed to be null and void as to any rights acquired by said Company thereunder, and the said lessors are entitled to the possession and ownership of the real estate mentioned in said lease to the same extent as if said lease had not been executed, and are also entitled to the possession and ownership of all the buildings, machinery, mining equipment, tools, implements and apparatus on said land, except what machinery, tools, implements or furniture have been placed thereon by the Virginia Consolidated Copper Company or its employes during its occupancy of said premises, under said lease, and before its forfeiture thereof, which said excepted property consists of the following--One air compressor, three Wilfrey Tables, and a number of Tee rails, as mentioned in the testimony taken in this case on October 13, 1911. And such other articles as the receivers may determine upon placed there by the Company and such replacing this property secure by said company. And it is further ordered and decreed that Vincent Sebold be and he is hereby appointed a receiver in this case, to act as co-receiver with John T. Fogle and Thomas A. Dunshee, the receivers heretofore