

CAMPBELL *v.* HARGRAVES.

Opinion delivered April 7, 1930.

1. RECEIVERS—MORTGAGED PROPERTY—CUSTODY OF LAW.—Mortgaged chattels were in custody of the law when a receiver, duly appointed and qualified, was ordered to take possession of them, though he did not in fact take charge of the property.
2. RECEIVERS—MORTGAGED PROPERTY—LIABILITY OF RECEIVER.—The fact that a receiver of mortgaged live stock was given to understand that the mortgagee did not desire him to take charge of them did not exempt the receiver from liability to the mortgagor.

3. RECEIVERS—MORTGAGED PROPERTY—DUTY OF RECEIVER.—Where a receiver of livestock was given to understand that the mortgagee did not desire him to take possession of the livestock, he should have reported the matter to the court and asked for a discharge, and, not having done so, he was liable to the mortgagor for any loss or damage occasioned thereby.
4. RECEIVERS—LIABILITY FOR USABLE VALUE OF LIVESTOCK.—Where livestock in a receiver's hands were old and either died from starvation or old age, the mortgagor was not entitled to recover for their usable value.

Appeal from St. Francis Chancery Court; *A. L. Hutchins*, Chancellor; judgment modified.

STATEMENT OF FACTS.

Upon the first day of August, 1925, Swofford Realty Company filed a petition in the chancery court against S. S. Hargraves, asking for the appointment of a receiver to take charge of certain personal property belonging to Hargraves upon which it had a mortgage.

The court first made an order giving Hargraves time within which to file a list of the personal property described in the mortgage. This was done, and on October 26, 1925, J. M. Campbell, sheriff of St. Francis County, Arkansas, was appointed receiver to take charge of and keep the livestock and farm tools embraced in said mortgage. He was ordered to give bond in the sum of \$500. The receiver gave a bond in the sum of \$500 with T. A. Buford as surety, and duly qualified as receiver on October 29, 1925.

On the 28th day of March, 1927, the receiver filed his report in the chancery court stating that the livestock were old and not worth taking charge of, and for that reason he had allowed them to remain in a pasture where they were running loose at the time of his appointment. He stated in his report that the cost of taking care of the live stock would have been greater than their value.

Hargraves filed exceptions to the report of the receiver in which he stated that, by reason of the receiver not taking charge of the mortgaged property, he had lost five head of stock which had been delivered to Bill

Smith to keep in a pasture during the pendency of the foreclosure proceeding. In the number, there were two horses of the value of \$125 each, one mule of the value of \$150, one mule of the value of \$80, and one mule of the value of \$75. He also stated that there was another mule on another farm of the value of \$80, and two other mules of the value of \$150, which the receiver failed to take charge of. He asked for the usable value of all the live stock at the sum of \$20 each per annum making a total of \$80. He also asked for judgment against the receiver and his bondsman in the sum of \$550 for certain plow tools and farming equipment, making a total of \$1,515. Hargraves testified to the value of the stock as above stated and introduced evidence tending to corroborate his testimony.

On the other hand, Campbell testified that the live stock were practically worthless, that only one of them was young, and that he died of fistula afterwards. The receiver testified that the remainder of the live stock were old and worthless, and for that reason he did not take charge of them. He examined the live stock in the pasture soon after he was appointed receiver, and found that they were very poor and would not have been of any practical service in farming for the next year. On this account he recommended that he not be required to take charge of them and keep them. He did not know what became of them afterwards. Other witnesses tended to corroborate his testimony and show that the live stock died from old age or starvation.

Hargraves testified that the farming implements and tools were worth in the sum of \$550, and testimony was introduced to corroborate his evidence. The receiver never took charge of the farming implements, and does not undertake to state their value. Other witnesses, however, described them as being very nearly worn out and of very little value. Two of the witnesses who were tenants on the farm of Hargraves and were familiar with the farming implements testified that they were not worth more than \$50 or \$60.

The chancellor found the value of the live stock and farming implements to be \$920, with interest thereon at six per cent. per annum from June 27, 1927. A decree was entered in accordance with the findings of the chancery court, and the case is here on appeal.

Mann & Harrelson, for appellant.

HART, C. J., (after stating the facts). The receiver was appointed upon application of the mortgagee. After his appointment, the receiver gave bond as required by the court and duly qualified as such receiver. After this, the property which he was ordered to take charge of was deemed to be in custody of law. The court acquired jurisdiction over the property when the receiver was appointed, the judicial process served upon the mortgagor, and the receiver duly qualified as such, although he did not in fact take charge of the property. 23 R. C. L. par. 68; *Buchanan v. Hicks*, 98 Ark. 370, 136 S. W. 177, 34 L. R. A. (N. S.) 1200; and *Palmer v. Texas*, 212 U. S. 118, 29 S. Ct. 230.

It will be noted that the receiver was appointed and qualified on October 29, 1925, and that he did not report his proceedings to the court until March 28, 1927. It is true that he testified that he examined the live stock soon after his appointment and reported to the attorney for the mortgagee that the live stock was so old and worthless that it would not pay to keep them, and that he understood from the acquiescence of the attorney for the mortgagee that he accepted his report and did not wish him to take charge of the live stock. This, however, did not exempt him from liability to the mortgagor. He was appointed by the court, and the mortgagor would not have the right to interfere with his possession of the live stock without permission of the court. It was his duty to have reported the matter to the court and to have secured his discharge to the end that the mortgagor might have been notified that he might retake possession of the live stock. Not having done so, the receiver was guilty of negligence in the discharge of his

duty, and was liable to the mortgagor for any loss or damages occasioned thereby.

We are of the opinion, however, when the evidence is carefully considered, that the chancellor erred in finding the amount of damages in favor of the mortgagor in the sum of \$920. It is true that he was justified in so finding under the evidence adduced in favor of the mortgagor; but we think that, when all the attendant circumstances are considered, this amount was too much. The mortgagor had not seen the live stock for some time prior to the appointment of the receiver. The testimony of the sheriff who was appointed receiver was that when he went to examine them they were poor and were not worth feeding. There was only one young horse in the number, and this one had the fistula, and soon died from that disease. The other four head of live stock were old, and either died from starvation or old age, or a combination of both. Hence the mortgagor could not recover any sum for their usable value. Two of the mortgaged animals were afterwards taken charge of and sold by him for what appears to have been their worth. This left only three animals to be accounted for; and, according to the testimony of the mortgagor, they were only worth \$230.

We also think the preponderance of the evidence shows that the plow tools and farming implements were greatly overvalued by the mortgagor. The evidence is not very clear as to whether the amount of farming tools and farming implements testified to by the mortgagor were in use on the farm when the receiver was appointed. In any event, according to the testimony of the tenants on the farm they were very old and were practically worn out. Two of the tenants testified that they were not worth more than \$50 or \$60. Without any further discussion of the evidence or reviewing it in detail, we are satisfied, after a careful consideration of it as it appears in the transcript, that the live stock and farm implements were not worth in the aggregate more than

\$500. Inasmuch as chancery cases are tried *de novo* in this court, the decree will be modified, and judgment will be rendered in favor of S. S. Hargraves against J. M. Campbell, receiver, and T. A. Burford, the surety on his bond, for the sum of \$500, and this sum shall bear interest from this date at the rate of six per cent. per annum, if the same is not paid within thirty days.

It is so ordered.
