

Case No. 4,236. EAKIN v. ST. LOUIS, K. C. & N. R. CO.  
[3 Cent. Law J. 655.]<sup>1</sup>

Circuit Court, E. D. Missouri.

Sept. Term, 1876.

LEASE BY RAILROAD COMPANY—RATIFICATION BY  
ACQUIESCENCE—CONSTRUCTION OF STATUTE—CONNECTED RAILWAYS.

1. A statute of Missouri (1 Wag. St. 312) provides that any railroad company may lease or purchase all or any part of a railroad with all its privileges, etc., if the lines of the road or roads of said companies are continuous or connected at a point either with or without this state, and provided that no such lease, etc., shall be perfect until ratified by a majority of the stockholders of the companies, parties to such agreement. A lease in perpetuity was made by the St. Louis, Council Bluffs and Omaha Railroad to the defendant company, with the consent of the stockholders of the former road, but the stockholders of the defendant company took no formal action on it until March, 1875, when they voted it down, although the company had made three semi-annual payments of interest on bonds issued under and secured by said lease. *Held*, that although the directors and officers of the defendant company, under the

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act of 1870, above quoted, could not rightfully consummate and perfect a lease of another railroad company without the assent of the stockholders given as therein provided, yet having undertaken to do so in execution of the agreement of August 13, 1871, and having reported that fact to the stockholders at their annual meeting in 1873 and 1874, the defendant company having availed itself of the benefit of the lease, and operated the leased road there-under, and carried out the provisions of the lease by making three semi-annual payments of interest on the coupons—all with the knowledge of, but without objection from the stockholders—that the lease in question has been, as in law it may be, ratified by acquiescence and action thereunder, as respects the innocent holders of bonds in question, and that the defendant company is estopped to insist as to such holders, that the lease is void because not formally assented to by the stockholders by an express vote or writing.

2. The line of the St. Louis, Council Bluffs and Omaha Railroad was within the meaning of the above act so “connected,” with the line of the defendant company, as to authorize the latter to lease the former.

Plaintiff [Eakin] brings this action [against the St. Louis, Kansas City and Northern Railroad Company] to recover upon interest coupons which were attached to certain bonds issued by the St. Louis, Council Bluffs & Omaha Railroad Co., and the essential facts in the case were agreed upon as follows:

First. That the plaintiff is a citizen of the state of New York, and the bona fide holder of the coupons sued on, and also of the bonds to which said coupons were attached.

Second. That defendant is a corporation organized January 2, 1872, under the general railroad laws of the state of Missouri, as per articles of association attached, marked “A.”

Third. That the St. Louis, Council Bluffs and Omaha Railroad Company was organized on the 20th day of September, 1870, under the general railroad laws of Missouri, as per articles of association, marked “B.”

Fourth. That defendant was organized in furtherance of the purposes of a voluntary, unincorporated association, formed on the 13th day of August, 1871, known as the Illinois, Missouri and Kansas Association, a copy of the agreement under which said association was formed, being hereto attached, marked exhibit “C.”

Fifth. That said association, on the 26th day of August, 1871, purchased in the name of Morris K. Jessup, the North Missouri Railroad, at a sale thereof, under a second mortgage, as per deed to Jessup, marked “D.”

Sixth. That on the 6th day of February, 1872, Morris K. Jessup conveyed said North Missouri Railroad to defendant, as per deed marked “E;” that the holders of a majority of defendant’s stock, assented to the purchase of the North Missouri Railroad from Jessup, at a meeting called for that purpose by the directors, and held at its office in the city of St. Louis, on the 2d day of February, 1872.

Seventh. That the Chillicothe and Brunswick Railroad Company was organized, under special act general assembly, state of Missouri, approved January 26th, 1864.

Eighth. That before the 14th of September, 1872, the Chillicothe and Brunswick Railroad had been completed from Brunswick to Chillicothe, a distance of 38¾ miles; and

the St. Louis, Council Bluffs and Omaha Railroad had been completed from Chillicothe to near Pattonsburg, a distance of 41 1/3 miles. That both roads had been constructed partly through pecuniary and other aid of the North Missouri Railroad Company—were continuously operated by the North Missouri Railroad Company, then by Jessup, and afterwards by defendant, until May 21st, 1874, as a branch of its main line.

Ninth. That on the 14th day of September, 1872, the Brunswick and Chillicothe Railroad was sold by trustee, under a second mortgage (subject to a first mortgage thereon, to secure \$500,000 at eight per cent.) and purchased by the St. Louis, Council Bluffs and Omaha Railroad Company, as per deed marked "F."

Tenth. That from the date of the purchase last aforesaid, until the 7th day of August, 1873, the St. Louis, Council Bluffs and Omaha Railroad Company was the owner (to the extent to which by such purchase it could become the owner) of the entire line from Brunswick to Pattonsburg.

Eleventh. That on said 7th day of August, 1873, the Brunswick and Chillicothe Railroad was again sold by trustee, under said first mortgage, and purchased by George W. Rice as per deed marked "H."

Twelfth. That on the 18th day of February, 1873, the president and secretary of defendant in its behalf executed the lease in question, a copy of which is marked "I."

Thirteenth. That said lease was duly ratified by the stockholders of the St. Louis, Council Bluffs and Omaha Railroad Company, at a meeting held on the 20th day of November, 1872, and that the bonds in question were issued in accordance with the terms of said lease, and dated on the 14th day of September, 1872, the date of the aforesaid purchase of the Brunswick and Chillicothe Railroad by the St. Louis, Council Bluffs and Omaha Railroad Company.

Fourteenth. That the proceedings of the defendant for the years 1872 and 1873, in relation to said lease, were as set forth in transcript thereof, marked "K;" and that the proceedings of the St. Louis, Council Bluffs and Omaha Railroad Company in relation to said lease, were as set forth in said transcript marked "L."

Fifteenth. That the whole series of bonds were issued in the form of the one herewith filed, marked "M."

Sixteenth. That during the whole period of the negotiability of said lease, T. B. Blackstone was the president, and James F. Howe the secretary of defendant; and that during said period J. H. Hammond was the

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president, and James F. Howe the secretary of the St. Louis, Council Bluffs and Omaha Railroad Company; and that all the meetings of the St. Louis, Council Bluffs and Omaha Railroad Company (held during said period) were held at defendant's office in the city of St. Louis.

Seventeenth. That said bonds were openly negotiated in the cities of St. Louis and New York, in the year 1873, and thereafter. That no proceedings were taken by the stockholders of the defendant, or any of them, or by any one representing defendant, to stop the issue or negotiation of the bonds aforesaid.

Eighteenth. That after the execution of said lease, and the issue of said bonds, defendant continued as theretofore to use and operate the whole line of road from Brunswick to Pattonsburg—had possession of all the rolling stock thereon, and continued to use and operate said road, as a branch of its main line, until said 31st of May, 1874, when it discontinued such operation.

Nineteenth. That defendant paid at his office, when due, the semi-annual coupons on said bonds, which fell due March 14th, 1873, September 14th, 1873, and March 14th, 1874, directly to the holders of the same, as per the agreement in said lease.

Twentieth. That the charter of the North Missouri Railroad Company, and the acts amendatory thereof, the printed copies of annual reports of the president of defendant, for the years 1873, 1874, 1875, with accompanying documents, are to be admitted in evidence.

Twenty-first. That the stockholders of defendant never, by any formal vote or writing, assented to the lease in question, or took any direct or affirmative action thereon prior to a meeting held March 2d, 1875, at which meeting said lease was submitted to them for their ratification or rejection, and one hundred and forty-seven thousand one hundred and forty-one (147,141) shares of stock were voted against the ratification of said lease, and thirty-four thousand five hundred and twelve (34,512) shares of stock were voted in favor thereof.

Twenty-second. That the black line upon the map of Missouri, herewith filed, represents the main line of defendant's railroad, that the blue line thereon represents the Brunswick and Chillicothe Railroad, and the red line the St. Louis, Council Bluffs and Omaha Railroad.

Twenty-third. That either party is at liberty to make any objection, upon the trial, to the competency or relevancy of any of the foregoing statements, documents and papers, as fully as though this agreement had not been made.

The 13th article of exhibit "C" above referred to is as follows: "Thirteenth. This association to lease the St. Louis, Council Bluffs & Omaha Railroad from Brunswick to the end of the present letting of the work, at or near the Gentry county line, say eighty-two miles more or less of road, when the same is completed, the work to be well done with

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necessary side tracks, depot buildings and water stations, and to be completed as a first-class western road according to the specifications furnished by Superintendent Arthur, and to pay therefor an annual rent of thirteen hundred and fifty dollars per mile, on a perpetual lease, with the right of the lessees to extend and own said road under its charter, with all the rights granted and held under the corporate powers of said company; provided said St. Louis, Council Bluffs & Omaha Railroad Company shall, on or before the tenth day of September next, notify the committee named in these articles, of its acceptance of this proposition, and shall, when requested, execute a lease in proper form upon the terms above named, to such persons or corporations as said committee shall designate, the lessees to pay all taxes. Said road to be delivered free from all liabilities except the first mortgage bonds, interest of which is not to exceed the rent herein named, and said rent is to be applied to payment of interest or dividends on said mortgage bonds or guaranteed stock. Lessors to have the right to issue new mortgage bonds to renew the bonds first placed on said road as they mature. The St. Louis, Council Bluffs & Omaha Railroad Company shall have the right, if they prefer to do so, to issue in lieu of bonds a guaranteed preferred stock to an amount that the rent will pay seven per cent. interest upon said stock, to be secured by a mortgage or deed of trust.”

The other exhibits referred to are omitted as not essential to an understanding of the questions of law decided by the court.

Frederick N. Judson, for plaintiff.

Wells H. Blodgett, for defendant.

Before DILLON, Circuit Judge, and TREAT, District Judge.

DILLON, Circuit Judge. This cause has been submitted upon an agreed statement of facts. The plaintiff seeks to recover of the defendant the amount of certain interest coupons attached to bonds issued by another company, viz., the St. Louis, Council Bluffs & Omaha Railroad Company. These bonds, 937 in number, each for \$1,000, and dated September 14, 1872, contain this statement: “The payment of interest on this bond is further secured by a lease of the road to the St. Louis, Kansas City and Northern Railroad Company, at a rental equal to the interest on the whole series of bonds, and which rental said latter company will pay by paying the coupon annexed to said bond.” On the back of each of said bonds is the following endorsement: “This bond is secured by a mortgage upon a railroad which is leased to the St. Louis, Kansas City & Northern Railroad Company, for a fixed rent equal to the amount of interest upon the whole

series of bonds, and by the terms of the lease the rent is to be applied by the lessee directly to the payment of that interest (Signed) T. B. Blackstone, President. James F. Howe, Secretary. St. Louis, Kansas City & Northern R. R. Company.”

A lease in perpetuity was made by the St. Louis, Council Bluffs & Omaha Railroad Company to the defendant company of its road from Chillicothe to Pattonsburg, from the 14th day of September, 1872, at an annual rental of \$65,000, semi-annually to be paid by the defendant company, of the semiannual interest on the said 937 bonds, directly to the holders thereof. It is not denied in argument, that the defendant company is liable in this action, if this lease and the covenants therein contained are binding upon it. The defence is that this lease is ultra vires of the chartered or statutory powers of the defendant corporation, and is based upon the act of 1870 (1 Wag. St. 315). This act is as follows: “Any railroad company, organized in pursuance of the laws of this or any other state, or of the United States, may lease or purchase all or any part of a railroad, with all its privileges, rights, franchises, real estate and other property, the whole or a part of which is in this state, and constructed, owned or leased by any other company, if the lines of the road or roads of said companies are continuous or connected at a point either within or without this state, upon such terms as may be agreed on between said companies respectively provided, that no such aid shall be furnished, nor any purchase, lease, sub-letting or arrangements perfected until a meeting of the stockholders of the said company or companies of this state, party or parties to such agreement, whereby a railroad in this state may be aided, purchased, leased, sub-let or affected by such arrangement, shall have been called by the directors thereof, at such time and place, and in such manner as they shall designate, and the holders of the majority of the stock of such company, in person or by proxy, shall have assented thereto, or until the holders of a majority of the stock of such company shall have assented in writing, and a certificate thereof signed by the president and secretary of said company or companies shall have been filed in the office of the secretary of state.” This lease was duly assented to by the stockholders of the lessor company, but it was never by any formal vote or writing assented to by the stockholders of the defendant company, and in March, 1875, the stockholders of that company voted it down. The defendant company operated the leased road, including the line from Brunswick to Chillicothe, as a branch of its main line, from the date of the said lease, (as well as before) down to May 31st, 1874, and meanwhile paid to the holders of the coupons of said 937 bonds the interest coupons thereon which matured March 14th, 1873, September 14th, 1873, and March 14th, 1874, without objection from any of the stockholders.

The defendant’s counsel, in his brief, states that the following are the questions involved: 1. Were the lines of railroad of the two companies “continuous” or so “connected” as to authorize the defendant to lease the road of the St. Louis, Council Bluffs & Omaha Company? 2. Had the board of directors and officers of defendant the power to make



and perfect a valid and binding lease of another railroad, without the consent of a majority of defendant's stock? 3. Have the stockholders of defendant, since the execution of said lease by its officer, done any act which amounts to a ratification thereof? 4. Have the stockholders of defendant either before or since the execution of said lease by its officers, done any acts or made any representations which estop the defendant from questioning the validity thereof?

Under the agreed statement of facts, we are of opinion that the line of the St. Louis, Council Bluffs & Omaha R. R. Co. was within the meaning of the act, so "connected" with the line of the defendant company as to authorize the latter to lease the former. This makes it necessary to determine whether the innocent holder (which the plaintiff is admitted to be) would be bound to ascertain at his peril whether the lines of the two companies were a connected line; and also whether under its chartered franchises the defendant company, irrespective of the act of 1870 above quoted, might not, under the power to extend and build branches, have executed that power by making a contract for a perpetual lease of a branch line.

Admitting that the directors and officers of the defendant company, under the act of 1870, above quoted, could not rightfully consummate and perfect a lease of another railroad company without the assent of the stockholders given as therein provided, yet having undertaken to do so, in execution of the agreement of August 13, 1871 (exhibit "C"), and having reported that fact to the stockholders at their annual meetings in 1873 and in 1874; and the defendant company having availed itself of the benefit of the lease and operated the leased road thereunder, and carried out the provisions of the lease by making three semi-annual payments of interest on the coupons, all with the knowledge of, but without objection from the stockholders; this court, guided by the principles sanctioned by the supreme court in the quite analogous case of *Zabriskie v. Cleveland, C. & C. R. Co.*, 23 How. [64 U. S.] 381, re-asserted and applied in *Bessel v. Jeffersonville*, 24 How. [65 U. S.] 287, 300; *Supervisors v. Schenck*, 5 Wall. [72 U. S.] 772; *Railroad Co. v. Howard*, 7 Wall. [74 U. S.] 412; *Pendleton Co. v. Amy*, 13 Wall. [SO U. S.] 305, and other cases, is of opinion that the lease in question has been, as in law it may be, ratified by acquiescence and action thereunder, as respects the innocent holder

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of bonds in question, and that the defendant company is estopped to insist as to such holders that the lease is void because not formally assented to by the stockholders by an express vote or writing. This provision is intended for their protection, and they may renounce or waive its benefits, or may become estopped by their laches, acquiescence and conduct from insisting upon its use as a sword to cut down the rights of others. Judgment for plaintiff.

<sup>1</sup> [Reprinted by permission.]