Case No. 7,684.

KEMBLE v. WILMINGTON & N. R. CO.

{35 Leg. Int. 165:[1] 5 Wkly. Notes Cas. 172; 13 Phila. 469.}

Circuit Court, E. D. Pennsylvania. Jan. 15, 1878.

CORPORATIONS—ISSUE OF BONDS BT RAILWAY COMPANY—WHEN PERMITTED IN PENNSYLVANIA.

The act of April 8, 1861, does not authorize the issue by a railroad company of bonds otherwise than for a new, adequate, valuable consideration, increasing the available funds of the corporation.

In equity. The bill alleged: (1) That complainant was a citizen of New York, and the Wilmington and Northern Railroad Company was the successor of the Wilmington and Reading Railroad Company, and a corporation of Pennsylvania. That said last mentioned company had duly made, executed, and delivered a certain mortgage or deed of trust to trustees therein named, to secure certain bonds of said company, which were duly issued. Proceedings upon said mortgage were duly had in this court, which resulted in a decree, in pursuance of which a sale of the property and franchises, thereby ordered to be sold, was duly made to attorneys in fact named in a certain writing, who in making the purchase acted under the writing for account of a number of the first-mortgage bondholders. (2) That said persons, for and on whose account said railroad was purchased, have since duly met and organized a new corporation, to wit, the corporation defendant, and have issued certificates of stock to those for and on whose account said purchase was made, to the amount of their respective interests therein, in shares of fifty dollars each; and have fully conformed to the act of April 8, 1861 (P. L. 259, Purd. Dig. 290), entitled "An act concerning the sale of railroads, canals, turnpikes, bridges, and plank roads," and the statute of the state of Delaware, whereby the defendant corporation is a body politic and corporation; and complainant is the owner of 396 shares of the capital stock thereof. (3) That said corporation defendant is about to execute a mortgage or deed of trust of all its property and franchises to secure a proposed issue to and among its stockholders, in proportion to their respective interests, of bonds to the aggregate amount of one million five hundred thousand dollars. (4) That defendant intends to execute said bonds and mortgage wholly without consideration, to have priority, as a supposed lien, over its future indebtedness, in violation of law and of its charter, are a fraud in law and a misapplication of its capital, and would result in lessening the value of the shares of complainant, and subject him to loss; the bill then prayed a writ of injunction restraining defendant from issuing or creating said or any bonds and mortgage except for present valuable and adequate consideration, and for further relief. The answer admitted the facts set forth in the first, second, and third paragraphs of the bill, except the allegations that the defendants are the successors of the Wilmington and Reading Railroad Company, and as to the amount of bonds to be issued, the true amount being $1,203,100, and denied, as alleged in the fourth paragraph,

that the mortgage and bonds which they propose to execute, are without consideration or void as against future creditors, or a fraud in law; but aver that there has been a good and sufficient consideration received by them for the same, viz. the signature to the letter of attorney authorizing the purchase; the surrender of the first-mortgage bonds of the Wilmington and Reading Railroad; and the conveyance of the surcharged property to the defendant by the attorney purchasing under the agreement; and that the said mortgage will have priority over future creditors, and that defendants are legally bound to create the same.

George M. Dallas, for complainant.

Lewis Waln Smith, for respondent.

CADWALADER, District Judge. The act of April 8, 1861, under which the corporation defendant was organized, authorized the issue of bonds to an amount not exceeding the capital, secured by mortgage, of the property and franchises. The act does not authorize the issue of such bonds otherwise than for a new, adequate, valuable consideration, increasing the available funds of the corporation. The bonds and mortgage which it is proposed to execute would not have this effect but would be for a different intended purpose. The injunction prayed is therefore decreed.

{NOTE. A decree was subsequently made, in a suit on the bonds for default of interest, that the mortgaged premises be sold as one property, although lying both in Delaware and Pennsylvania. Case No. 11,563.}

[1] {Reprinted from 35 Leg. Int. 165, by permission.}