Case No. 11,986.

ROCKVILLE & W. TURNPIKE ROAD v. VAN NESS.

{2 Cranch, C. C. 449.}[1]

Circuit Court, District of Columbia. April Term, 1824.

CORPORATIONS—STOCK SUBSCRIPTION—ACTION TO RECOVER—ESTOPPEL.

1. The commissioner's book of subscriptions is prima facie evidence that the subscriptions were genuine, or made by persons duly authorized: and the fact that the defendant was appointed, by the stockholders, one of the managers, and had acted as such, is prima facie evidence of an admission, on his part, of the existence of the corporation.

{Cited in Turnbull v. Payson, 95 U. S. 421.} {Cited in brief in Fisher v. Seligman, 75 Mo. 19.}

2. Directors de facto, of a corporate body are to be considered, prima facie, as directors de jure.

{Cited in U. S. v. Williams, Case No. 16,713.}

3. It is not incumbent on the plaintiff to prove that the managers were elected by a majority of votes.

{Cited in Slocum v. Warren, 10 R. I. 122.}

4. It is not competent for any stockholder to deny the existence of a corporation.

5. It is not competent for a real original subscriber to the company, who was one of the commissioners, named in the act of incorporation, for receiving subscriptions, and who acted as such, and who was afterwards, at a meeting of the stockholders, elected as one of the managers, and acted as such, to object, in an action by the company against him for not paying the instalments called for, that a sufficient number of shares had not been subscribed to justify such election.

This was an action on the case {by the president, managers, and company of the Rockville & Washington Turnpike Road} for $1,615, being the amount due from the defendant {John P. Van Ness,} for his subscription upon eighty-five shares of the capital stock. The plaintiffs read the act of Maryland of February 3, 1818, (c. 97), entitled "An act to

incorporate companies to make certain turnpike roads through the counties of Montgomery, Frederick, and Washington, and for other purposes," and also the act of congress of February 15, 1819 (3 Stat. 482), entitled "An act to authorize the president and managers of the Rockville and Washington Turnpike," &c, and also the original subscription book opened at the city of Washington, by the defendant and the other commissioners named in the Maryland act, and the book containing the original minutes of the proceedings of the company, showing the time of the organization of the company, and the election of the defendant as one of the managers, and his acting as such, and the orders for the payment of the instalments, etc.

Mr. Hay, for defendant, contended that the plaintiff must show itself to be a body corporate, and must prove that the 1500 shares required by the charter to be subscribed, were actually taken by real bona fide subscribers, and offered evidence to prove that the subscription of J. H. Blake, for fifteen shares, as entered in the subscription book by the defendant, was so entered by the defendant without the authority of the said Blake; that it was made publicly without specifying or alleging any authority therefor; and was so made from a desire to complete the subscription in order to justify the organization of the company, and under an expectation that such subscription would be ratified by the said Blake, whose name was thus subscribed. Mr. Hay also offered to prove that so many of the subscriptions were made in the names of persons without their authority as would reduce the number of shares actually subscribed for below 1500, the number required by the charter as a prerequisite to the organization of the company.

Mr. Jones, contra. The company was actually organized, managers chosen, of whom the defendant was one. The plaintiff cannot be bound in an action

against this defendant, a stockholder, to prove the handwriting of all the subscribers, nor that the subscriptions were bona fide. As against this defendant, the book of subscriptions is conclusive evidence. The plaintiff is only bound to prove that it is acting as a corporation de facto. This court has so decided in the case of Mechanics' Bank of Alexandria v. Minor [Case No. 9,385]. If it is a corporation de facto, it must be presumed to be so de jure, until those who exercise the franchise shall be removed by quo warranto.

THE COURT (nem. con.) refused to receive the evidence offered, saying that, as the defendant was a real original subscriber to the company, and was one of the commissioners for receiving the said subscriptions, and was elected one of the managers of the said company, and acted as such, in virtue of the said election, it was not competent for him, in this action, to object that a sufficient number of shares had not been subscribed to justify such election.

THE COURT also (nem. con.) was of opinion 1081 that the commissioners' book of subscriptions is prima facie evidence that the subscriptions were genuine, or made by persons duly authorized, and that the fact that the defendant was elected one of the managers by the stockholders, and acted as such, is prima facie evidence of an admission, on his part, of the existence of the corporation. That directors de facto, of a corporate body, are to be considered prima facie as directors de jure, and that it was not incumbent on the plaintiff to prove that the managers were elected by a majority of votes. That it is not competent for any stockholder to make the objection to the existence of the corporation, inasmuch as they have chosen the president and managers; and have had all the benefits of the corporation. They cannot now set up as a defence their own want of power.

Verdict for the plaintiff, $1,405 with interest, &c.

The defendant took a bill of exceptions, but did not prosecute a writ of error.

{For subsequent actions by same plaintiffs against different defendants, see Cases Nos. 11,984 and 11,985.}

[1] {Reported by Hon. William Cranch, Chief Judge.}