

having now been paid into court for the libelants, this objection will not avail the libelants.

The order will be that the money paid into court be paid to the libelants, and the libel dismissed, with costs against libelants.

IRON CITY NAT. BANK OF PITTSBURGH v. SIEMENS-ANDERSON
STEEL Co.

(Circuit Court, W. D. Pennsylvania. April 26, 1882.)

1. EXECUTION—STATUTE CONSTRUED.

The act of the Pennsylvania legislature of April 7, 1870, gave a new remedy against corporations in addition to the provisions of the act of 1836, "and in lieu of the provisions or proceedings by sequestration" under the prior acts.

2. SAME—ON CORPORATIONS.

The sole purpose of the act of 1870 was to supersede the remedy by sequestration, and substitute therefor the levy and sale by *feri facias* of the property, franchises, and rights of the corporation.

3. EXECUTION SALE.

The real property of a private trading corporation is held for strictly private ends, and should be sold agreeably to the provisions of the act of 1836, "in a manner provided in other cases for the sale of land on execution."

Sur petition on behalf of mechanic's-lien creditors.

D. T. Watson, for plaintiff.

J. H. Miller and *John M. Kennedy*, for mechanic's-lien creditors.

ACHESON, D. J. It is very clear to me that the act of April 7, 1870, (Purd. 291,) did not repeal or affect the provisions of the seventy-second section of the act of sixteenth of June, 1836, "relating to executions." The new remedy thereby given against corporations is expressly declared to be "in addition to" the provisions of said section, "and in lieu of the provisions or proceedings by sequestration" under the act of 1836. The sole purpose of the act of 1870, in my judgment, was to supersede the remedy by sequestration, and substitute therefor the levy and sale by *feri facias* of the property, franchises, and rights of the corporation. Such, in my apprehension, was the construction given to the act of 1870 by the supreme court of the state in *Philadelphia & Baltimore Central R. Co.'s Appeal*, 70 Pa. St. 355, and *Bayard's Appeal*, 72 Pa. St. 453.

Under the act of 1836, after the remedies provided by the seventy-second section were exhausted, the way was open to sequestration, agreeably to the seventy-third, seventy-fourth, and seventy-fifth sections. 70 Pa. St. 356. But under the act of 1870 the corporate prop-

erty, franchises, and rights, which were formerly reached by sequestration, are sold out and out, and the proceeds divided among all the creditors, as in case of insolvency.

When carefully examined, *Hopkins & Johnson's Appeal*, 90 Pa. St. 69, will be found, I think, to be in substantial harmony with the foregoing views. I do not think the court there intended to intimate that the seventy-second section of the act of 1836 is not in full force. By the express provisions of the act of 1870, "lands held in fee" are excepted out of the sale thereby authorized, and such lands "shall be proceeded against and sold in the manner provided in cases for the sale of real estate." The plain meaning is that real estate of a corporation which before the act of 1870 was subject to levy and sale, shall remain liable to be taken in execution and sold as previously. This view is entirely consistent with *Longstreth v. Philadelphia & R. R. Co.* 11 Weekly Notes Cas. 309, which merely decides that the act of 1870 "did not intend to subject the property of corporations, before exempt, to execution piecemeal." The levy there was upon lots of ground held by the railroad company for public uses, viz., freight purposes, and not the subject of levy prior to the act of 1870. *Susquehanna Canal Co. v. Bonham*, 9 Watts & S. 27. The principle of the decision is that the franchises of a railroad company, including its real estate necessary to the proper exercise of its public duties, must be levied on under the act of 1870 and sold as an entirety.

But the Siemens-Anderson Steel Company is a private trading corporation, and its real estate is not held for public purposes, but for strictly private ends. Confessedly, its real estate levied on here is held in fee. It is to be sold, therefore, (agreeably to the seventy-second section of the act of 1836,) "in a manner provided in other cases for the sale of land upon execution."

I am of opinion that it would be improper for the marshal to sell the franchises of the defendant corporation, and all its real and personal property levied on, as an entirety. I am further of opinion that in selling the defendant's real estate the marshal should follow the established rule that different parcels of land should be sold separately. As at present advised, I think the real estate in the Fourteenth ward and divided by Second avenue, should be sold as two distinct parcels. Upon this latter point, however, I will hear the counsel further, if it is desired, upon an application to modify the order about to be made.

And now, April 26, 1882, it is ordered that the marshal sell the real estate and other property and franchises of the defendant in accordance with the views expressed in the foregoing opinion.

AULTMAN *v.* MORSE.

(Circuit Court, *W. D. Missouri, W. D.* November term, 1882.)

1. CONTRACT OF SALE—ACCEPTANCE.

Where a contract of sale of machinery provided that notice should be given of any defect in the machinery within five days, a failure to give such notice will entitle the plaintiff to a verdict for the value thereof, but such notice may be waived.

2. SAME—VALUE OF PROPERTY.

The law presumes the amount agreed upon by the parties is the true value of the property sold, and it is for the defendant to show that it is not.

Phelps & Brown, for plaintiff.

Thompson & Cravens, for defendant.

KREKEL, D. J., (*charging jury.*) The dispute before you has grown out of the sale of a steam thresher and attachments sold by Aultman & Co. to Morse, the defendant, for \$1,660. To secure this amount the mortgage in evidence was given. By it the machinery sold by Aultman & Co., as well as the cattle about which testimony has been given, were conveyed. The machinery has been sold by Aultman & Co. under the provisions of the mortgage. When Aultman & Co. demanded the cattle conveyed by the mortgage, Morse refused to deliver them up, and Aultman sued out his writ of replevin to obtain possession of the cattle. Thereupon Morse gave bond, and thus retained the possession of the cattle. He (Morse) now comes and defends that replevin suit, and says that the machinery sold him was not such as it was warranted to be, and that he ought not to pay for it, and that he has already paid more than the machinery is worth. The written agreement under which the machinery was sold contains a provision that it must be tried within five days, and if found faulty notice thereof must be given within the five days to the company and the local agent from whom the machinery was bought, otherwise it shall be assumed that the purchaser has accepted the machinery in satisfaction of the contract, and shall thereafter have no claim on the seller for damages. The company, Aultman & Co., have their manufactory or place of business in Ohio. The defendant, Morse, lives in Missouri. The time for trying machinery of the kind sold and the notices to be given may appear to you to be short, yet the parties have so made the contract, and they must stand by it. You are instructed, therefore, that plaintiff is entitled to a verdict in his favor if notice of defect in the machinery sold was not given within five days, as provided in the contract, and you should find the prop-