was merely nominal—one dollar—and that the assignor paid the expenses of the suit. But these are not inconsistent with an actual transfer, and they signify nothing when taken in connection with the testimony of the assignor and assignee, who both state that the transfer was absolute, and that there is no understanding or agreement by which the assignor is to have any of the contents of the note or the fruits of the litigation. It follows that the court had jurisdiction of the action on the note, and that the judgment therein is valid and binding on all the defendants herein for the purposes of this suit. The plaintiff is therefore entitled to have the conveyances of December 29, 1877, to the defendants Beauchamp and Mary Jackson, so far as they hinder and delay him from obtaining satisfaction of his judgment, set aside and held for naught. But it is a mistake to suppose that the property, or any portion of it remaining after the satisfaction of the judgment, will revert to the husband. As between him and his wife, the conveyances are good and vest the title in her. They are not void, but only voidable at the suit of a creditor who is thereby prevented from the collection of his debt, and then only so far as to enable him to collect it. *In re Estes*, 7 Sawy. 460. If there is any surplus of the property, or the proceeds thereof, after satisfying the judgment of the plaintiff and the costs of this suit, as it is probable there will be, it belongs to the wife.

A decree will be entered setting aside the conveyances as to the plaintiff, and directing the master to sell the property, or so much thereof as may be necessary to satisfy the plaintiff's judgment and the costs of this suit and the execution of the decree herein, and pay the remainder of the proceeds, if any, to the defendant Mary Jackson.

LEWIS, JR., *v.* MEIER and others.*

(*Circuit Court, D. Kansas.* November Term, 1882.)

1. EQUITY—FRAUDULENT CONTRACT—NO RELIEF TO EITHER PARTY.
   The general rule is that a court of equity will not interfere in behalf of either party to a contract fraudulent as to both parties, either to enforce or set aside the same, or award damages for a breach thereof.
2. SAME—CORPORATIONS BOUND BY SAME RULE.
   A corporation may be guilty of fraud, and if through its board of directors it enters into a fraudulent contract, it is subject to the rule above stated.

*From the Colorado Law Reporter.

3. CORPORATIONS ARE BOUND BY ACTS OF AGENTS OR DIRECTORS.
A contract made by the directors of a corporation in the course and within the general scope of their powers and duties, is to be regarded as made by the corporation, although in making it the directors may have acted fraudulently. The rule is the same as that which prevails between natural persons.

4. RULE APPLIED—CONTRACT BY CORPORATION WITH ITS DIRECTORS.
Where a railway corporation, through its board of directors, entered into a contract for the construction of a part of its road with certain persons, some of whom were directors of the company, and, in pursuance of that contract, executed its bonds in a large sum, secured by mortgage upon its property, *held*, that although the contract be held void, yet the corporation, being itself a party to the fraud, could not maintain a bill to set aside and cancel the mortgage as a cloud upon its title.

J. P. Usher, for complainant in cross-bill.

Mr. Glover and *Mr. Shepley*, for defendants.

MCCRARY, C. J. This suit was originally brought to foreclose a mortgage executed by the Kansas Pacific Railroad Company to certain trustees, to secure bonds to the amount of $6,500,000. The original bill has been dismissed, and the case stands upon a cross-bill filed by the defendant company, in which it is alleged that the mortgage above referred to is fraudulent and void, and ought, therefore, to be canceled as a cloud upon its title. It is alleged that said mortgage was executed as part of a scheme whereby the directors of the company united with certain others to enter into certain contracts with the company to build a portion of the company's railroad, and to receive certain considerations therefor. In other words, it is alleged that the directors of the company were members of a construction company, to which the bonds secured by said mortgage were issued, and that they contracted fraudulently with themselves. Conceding, for our present purposes, the truth of these allegations, the question arises, can the defendant company be granted the affirmative relief prayed for? The general rule is that a court of equity will not, in such cases, interfere in favor of either party, either to enforce or set aside the contract, or to award damages for its breach. The parties being *in pari delicto*, the court will leave them where it finds them. If this were a contract between natural persons, there could be no doubt about the application of this doctrine; but it is said that the rule does not apply to the defendant corporation, because, while the contract was made in the corporate name, the corporation is not, within the meaning of the rule, a party to it, since in making it the directors exceeded their authority. To sustain this view would be, in effect, to hold that a corporation can in no case be guilty of fraud; for, being an artificial being, it can act only through agents, and it

would be impossible in any case to show that the charter of a corporation expressly authorized the perpetration of a fraud. It is, however, well settled that a corporation may be guilty of a fraud. The courts have gone further, and held such artificial persons liable in tort in certain cases. The true rule is that such acts as are done by the directors in the course and within the scope of their powers and duties, are to be regarded as the acts of the corporation. Such is the rule, even if the acts are unlawful and tortious. 2 Hil. Torts, 322; *Copley* v. *G. & B. Sewing-Machine Co.* 2 Woods, 494; *Railroad Co.* v. *Quigley*, 21 How. 202; *Sandford* v. *Hundy*, 23 Wend. 260; *Brokaw* v. *N. J., etc., Transp. Co.* 32 N. J. Law, 331; *Fogg* v. *Griffin*, 2 Allen, 1; *Rives* v. *Plank-road Co.* 30 Ala. 92; *Litchfield Bank* v. *Peck*, 29 Conn. 384; *Lee* v. *Village of Lundy Hill*, 40 N. Y. 442; *Perkins* v. *Railroad Co.* 24 N. Y. 213.

These authorities abundantly show that if the directors or agents employed by a corporation conduct themselves fraudulently, so that if they had been acting for private employers such employers would have been affected by their frauds, the corporation is, in like manner and to the same extent, affected by them.

In other words, the settled doctrine is that a corporation can no more repudiate the fraudulent acts of its agents than an individual can. The rule is the same as to both. The doctrine as applicable to private individuals is familiar. The principal is liable for the acts of the agent, not alone in cases where they are expressly authorized, but also in all cases where such acts come within the range of the agent's duties.

In the case of the *Railroad Co.* v. *Quigley, supra*, Mr. Justice CAMPBELL says: "The result of the cases is that for acts done by the agent of a corporation, either *in contractu* or *in delicto*, in the course of its business or of their employment, the corporation is responsible as an individual is responsible under like circumstances."

In that case the corporation was sued for libel, and held liable, the defense that the defendant was a corporate body, with defined and limited powers, being overruled. It was argued that the corporation, being a mere legal entity, it was incapable of malice, which is a necessary ingredient of a libel. The defense there, as here, was that the directors acted outside of their authority, and bound themselves as individuals only. But the court said, (folio 209:) "To support this argument we would be required to concede that a corporation could only act within the limits and according to the faculties determined

by the act of incorporation, and that, therefore, no crime or offense can be imputed to it; that, although illegal acts might be committed for the benefit or within the service of the corporation, and to accomplish objects for which it was created, by the direction of their dominant body, that such acts, not being contemplated by the charter, must be referred to the rational and sensible agents who performed them, and the whole responsibility must be limited to those agents; and we should be forced, as a legitimate consequence, to conclude that no action *ex delicto* or indictment will lie against a corporation for any misfeasance."

It is true that the question there was whether the corporation was liable in damages for injuries caused by a malicious libel; but if the corporation is liable for *one* of the consequences of an unauthorized and illegal act of its agents, on the ground that the act was done "to accomplish objects for which it was created," it is clearly liable for *all* such consequences. Here, one of the consequences of the illegal and fraudulent contract is that neither party shall be heard in a court of equity to demand any relief either enforcing or annulling the same. This is a rule of great general importance, and one which the courts are often called upon to enforce in the interest of sound morality and for the public good. To sustain the present cross-bill would be to determine that the rule has no application to corporations, and that these artificial persons, who act from necessity only through agents, may, through such agents, enter into fraudulent and immoral contracts, and, after receiving their benefits, may ask a court of equity to cancel them, on the ground that their agents made them without authority.

We cannot give our assent to such a doctrine. A very large proportion of the most important business of the country is transacted by these artificial persons, and they control vast aggregations of wealth and exercise vast powers. It is the sound policy of the law to apply to corporations, as far as possible, those rules of good conscience and equity which are enforced as between man and man. The contract now in controversy was made by the board of directors for the purpose of constructing a railroad, which the corporation was clearly authorized to construct. It was therefore within the general scope of their powers. The corporation may be permitted to defend against the contract on the ground that it was fraudulent as alleged; but if so, it is not because the corporation has any special claims to the favor of a court of equity in that regard, but solely upon the ground

that neither party to a fraudulent contract (both having participated in the fraud) can demand its enforcement. The company is not entitled to affirmative relief, and therefore the cross-bill is dismissed.

FOSTER, D. J., concurs.

MOSGROVE and others *v.* KOUNTZE and others.

(*Circuit Court, D. Nebraska.* November Term, 1882.)

1. EQUITY—PRACTICE—SUPPLEMENTAL BILL.
   Leave will not be granted after decree to file a supplemental bill for the purpose of setting up matters which might, by the use of due diligence, have been ascertained, and pleaded by way of amendment in the original suit.
2. SAME—CHANGING PARTIES.
   The fact that the complainant desires to drop out of the case some of the parties defendant to the original bill, does not of itself give him the right to proceed by supplemental bill, especially when it appears that such change of parties is not essential.
3. REMOVAL OF CAUSE—JURISDICTION OF CIRCUIT COURT.
   A circuit court of the United States has no jurisdiction of a case commenced in a state court on a contract by an assignee, and removed thence to said court, unless the action might have been brought originally in the circuit court by the assignor, and it is probable that a plea to the jurisdiction would be entertained in a supplemental proceeding.

Application for Leave to File a Supplemental Bill.

It appears from the record that about the year 1877 John I. Redick recovered a judgment in the district court for Douglas county, Nebraska, for about $2,500 against the Omaha & Northwestern Railroad Company, which judgment was afterwards assigned to one James E. Brown, who commenced a suit in equity in the district court of Burt county, Nebraska, against John A. Horback, Henry W. Yates Herman Kountze, Francis Smith, Frank Murphy, and Sally A. Horback, for the purpose of subjecting to the payment of said judgment certain real estate in the bill described.

The ground of the action was that the said respondents, some of them being directors of said railroad company, had entered into a contract with the company to construct a portion of the line of railway, which contract was contrary to public policy and void; and that they had received the land sought to be subjected as a part of the proceeds of said contract, and therefore held it in trust for the creditors of said company. It was in the original bill averred that the respondents had received