

PALMER v. WARDENS AND VESTRYMEN OF ST. STEPHEN'S CHURCH.

(Circuit Court, N. D. Illinois. 1883.)

PROMISSORY NOTE—EXECUTION BY VESTRYMEN OF CHURCH—RELIGIOUS CORPORATION—LIABILITY.

Where a negotiable promissory note upon its face does not purport that the parties who signed the note as wardens and vestrymen of a church were directed to execute such note by any vote or order or direction of the church or congregation, as required by section 43 of chapter 32 of the Revised Statutes of Illinois, and the evidence fails to establish any such direction or order, or any ratification by the church or congregation, a *bona fide* holder thereof cannot recover in an action on the note against the corporation.

At Law.

C. L. Easton, for plaintiff.

S. Corning Judd, for defendant.

BLODGETT, J. This is a suit on a note, dated June 14 1870, for \$1,600 and interest, payable in three years from date to Chauncy T. Bowen, and duly indorsed to the plaintiff. The declaration charges that the defendant, a corporation organized and existing under the laws of the state of Illinois, made and delivered the note in question to Bowen, and the same was indorsed to plaintiff. The defendant pleads the general issue, and a plea denying the execution of the note, verified by affidavit. The only proof on the part of the plaintiff is by the production of the note, and the testimony of a witness that the persons whose names are signed to the note admitted to him that they had signed the note in question as wardens and vestrymen of St. Stephen's church, and the further testimony of the plaintiff that she is the holder of this note, for value, by purchase from Bowen.

Sections 35 to 49 of chapter 32 of the Revised Statutes of Illinois provide the mode of organizing, and the powers and duties, of religious corporations in this state. Section 35 provides—

“That any church, congregation, or society formed for the purpose of religious worship may become incorporated in the manner following, to-wit: By electing or appointing according to its usages or customs, at any meeting held for that purpose, two or more of its members as trustees, wardens, and vestrymen, or such other officers whose powers and duties are similar to those of trustees, as shall be agreeable to the usages and customs, rules or regulations, of such congregation, church, or society, and may adopt a corporate name; and upon the filing of the affidavit, as hereinafter provided, it shall be and remain a body politic and corporate by the name so adopted.”

Section 43 reads as follows:

"The trustees shall have the care, custody, and control of the real and personal property of the corporation, subject to the direction of the congregation, church, or society, and may, when directed by the congregation, church, or society, erect houses or buildings and improvements, and repair and alter the same, and may, when so directed, mortgage, incumber, sell, and convey any real or personal estate of such corporation, and enter into all lawful contracts in the name of and in behalf of such corporation."

The proof in this case wholly fails to show that this contract, or the making of this note, was directed or authorized, or has been in any manner ratified, by the congregation or body of this corporation. It is upon its face merely a naked promissory note, by which the wardens and vestrymen of St. Stephen's church promise to pay the sum in question. It purports on its face to be the contract of the corporation as such. The paper does not, on its face, purport to have been made by virtue of any vote or order or direction of the church or congregation; so that while the plaintiff in this case may be, and I have no doubt, from the proof, is, a *bona fide* purchaser of this note for value, yet the case does not come within the large class of cases which are found in the books where a corporation has been held liable, or rather estopped from denying its liability, in favor of a *bona fide* purchaser for value, because the paper on its face recited that the proper preliminary steps or conditions precedent by which such a contract could be made had been complied with. Here there is no evidence whatever, either produced on the trial or existing on the face of the paper itself, that this congregation had ever given any directions for the execution of this note, or that it has ever since that time ratified it.

There was some evidence in the case that interest was paid on three occasions in all, but the proof fails to show that this interest was paid by the defendant corporation, or by any one acting for it. It was paid by a clerk of Mr. Bowen, and, for aught we know, Mr. Bowen himself may have paid this interest; at any rate, there is no proof that the corporation ever sanctioned or directed the payment of interest, or that it was paid at the instance or direction of the congregation, so as to work a ratification or estoppel *in pais*.

The proof on the part of the plaintiffs that certain persons, whose names are signed to this note, admitted that they had signed the same as wardens and vestrymen of this corporation, and that they were such wardens and vestrymen at the time of signing, cannot,

standing by itself, bind the defendant corporation, as there is no rule better settled than that a person cannot admit himself into office, nor, by simply admitting his own agency, bind his principal.

The issues, therefore, must be found for the defendant.

HALL v. UNION PAC. RY. CO.

Circuit Court, D. Colorado. June 18, 1883.)

NEGLIGENCE—WHETHER A QUESTION OF LAW OR FACT—VISIBLE AND OBVIOUS DANGER—CONTRIBUTORY NEGLIGENCE.

Under the circumstances of this case, whether the railroad company was guilty of negligence in allowing a telegraph pole to remain so near to its track that an employe, while in the discharge of his duty, was injured by colliding therewith, is a question for the jury, and the demurrer should be overruled.

HALLETT, J., (*orally.*) The case of Hall against the Union Pacific Railway Company is an action for injuries received by the plaintiff while in the service of the company. He avers that he was a fireman on one of the locomotive engines used on the defendant's road, and that upon one occasion, while engaged in the performance of his duties, it became necessary to take notice of one of the boxes of the tender or engine, which had become heated. He was instructed to do this by the engineer. In leaning out of the car for that purpose he came in contact with a telegraph pole which stood within 12 inches of the car. The negligence alleged against the company is in allowing the pole to remain in that position so near to the road. Upon that question there are conflicting authorities, as is usual in a case of this kind. In some cases precisely the same—one, at least, as to the nature of the obstruction, except that the pole was a little further from the track than this one—the company was held liable for allowing the obstruction to remain there. In other cases in point it is held that such an obstruction, being a visible and obvious danger, the servant must take care of himself. My judgment inclines to the opinion, as to this particular obstruction, it is a question for the jury to determine whether the company was negligent in permitting it to remain so near the track.

The demurrer will be overruled.