

ther contradictory words, "along Corbett street," because it was manifestly impossible that a line laid in that direction would run along Corbett street. The false particular, "along Corbett street," was, therefore, rejected sooner than that which was truly and well said or done should perish. But on the ground already stated, that the sale of the lot was unauthorized and illegal, because it was made after the time limited by law, I must hold that the deed to Fisher is void.

The finding and judgment of the court will therefore be that the plaintiff is the owner in fee of the premises and entitled to the possession thereof, and that she recover the same, with costs and expenses.

It may be thought that I have given this case more consideration than the amount at stake on it demands. But my excuse is, if any is needed, the importance of the questions involved in it, the uncertain and confused state of the law on the subject, and the further fact that I am required to construe and apply the revenue laws of the state touching questions that have not yet been passed on by its supreme court. But, while sitting in this federal forum as a judge of the national government, I do not forget that the state is one of the pillars on which rests the fabric of that government; nor that I am a citizen of the former, and have as much interest in her well-being and respect for her authority as any who may profess more in this respect.

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NINTH NAT. BANK OF THE CITY OF NEW YORK *v.* RALLS Co., in the State of Missouri.<sup>1</sup>

(Circuit Court, E. D. Missouri. April 29, 1884.)

1. MUNICIPAL BONDS—REAL PARTY IN INTEREST—JURISDICTION—EVIDENCE.

Where, in a suit upon municipal bonds, the defendant pleads that the plaintiff is not the real party in interest, the production of the bonds by the plaintiff is *prima facie* proof that he is the legal holder; and it then devolves upon the defendant to prove that the bonds have been transferred to the plaintiff collusively, or without value, in a way to operate a fraud upon the jurisdiction of the United States courts.

2. SAME.

Where the proof is that the bonds were transferred to the plaintiff to secure existing and accruing indebtedness to him, he is the real party in interest for the purpose of maintaining a suit thereon, irrespective of the rights of parties *inter sese* prior to the transfer.

At Law.

This was an action upon certain coupon bonds alleged to have been issued by the defendant and to be owned by the plaintiff. The defendant by its answer denies the allegations of the petition, and alleges that the plaintiff is not the real party in interest.

<sup>1</sup>Reported by Benj. F. Rex, Esq., of the St. Louis bar.

*J. B. Henderson and James M. Lewis* for plaintiff.

*Henry A. Cunningham* for defendant.

TREAT, J. This case being tried without the intervention of a jury, the court finds that the bonds and coupons sued on were duly executed by the defendant. By receiving full proof of the execution thereof, it became unnecessary to decide whether said bonds, being under the defendant's corporate seal, did not prove themselves, despite the local statutes, and without the detailed proof made. The court further finds, under the objection of plaintiff as to the competency of evidence thereto, the same having been heard, that the facts as proved are: That said bonds and coupons are the real property of one Hardin, a citizen of Missouri, who had deposited the same for collection with a bank in said state; that said bank transferred the same to the plaintiff in this case as collateral to indebtedness then existing between said bank, and for the personal indebtedness of the president of said bank, and for accruing indebtedness, the amount of which was largely in excess of said bonds and coupons at the date of suit brought, and at the time of said transfer.

As the plaintiff bank held such bonds and coupons as collateral under the general facts stated, and produced the same as holder thereof, the court received the same as if the plaintiff was the innocent holder, despite inquiry as to the antecedent rights of prior parties. The evidence with respect thereto has been received under objection, in order that the proposition of law involved may be fully considered; that is, when defendant pleads that the plaintiff is not the real party in interest, what should be the proper course of proceeding? The court holds that the production of the bonds and coupons by plaintiff shows *prima facie* that it is the legal holder thereof; that it devolves upon the defendant to prove that the transfer to plaintiff was collusive, or without value, in a way to operate a fraud upon the jurisdiction of the United States court. When the proof is that the transfer is for value to secure existing and accruing indebtedness to the plaintiff, the latter is the real party in interest for the purpose of maintaining the suit, irrespective of the rights of parties *inter sese* prior to said transfer.

Judgment for plaintiff.

ANSCHUTZ v. MILLER and another.<sup>1</sup>

(Circuit Court, E. D. Missouri. April 9, 1884.)

## SALES—MISREPRESENTATIONS AS TO QUALITY—COUNTER-CLAIM.

Where A. sold B. a lot of ice at an agreed price, to be delivered when called for, and went to expense, at B.'s request, in getting the ice out of the house in which it was stored, and B. paid part of the agreed price and part of the sum expended by B. at his request, and went to expense in sending for the ice, but only received about half of it, and refused to receive the balance, on the ground that he had been deceived into purchasing it by B.'s misrepresentations as to its quality, *held*, in a suit by A. for the balance of the contract price and the balance of money expended as aforesaid, that A. was entitled to recover, notwithstanding any misrepresentations he might have made, if B. had been given a fair opportunity to inspect the ice before he closed the bargain; but that if B. had not been given an opportunity to inspect it, and had relied entirely upon A.'s representations as to its quality, and it was in fact of a poorer quality than represented, then A. was only entitled to recover the value of the ice received by B., and that B. was entitled to be allowed as a counter-claim and to recover back from A. all the money he had paid A. in excess of the value of the ice received.

## At Law.

*Hagerman, McGrary & Hagerman*, for plaintiff.

*Johnson, Lodge & Johnson*, for defendant.

TREAT, J., (*charging jury*.) Though the pleadings are not quite so distinct as they might be, yet they sufficiently show what the controversy between the parties is. It is alleged that 843½ tons of ice were contracted for between the parties, plaintiff and defendant, at the price of three dollars per ton. On that there had been paid all that, at the contract price, would be required, except the sum of \$1,030.50. That appears in the pleadings, and is embraced in the first count. It also appears, and is admitted by defendant's counsel, with respect to the second count, that the defendant did make the expenditures and perform the labor set out in that count, on which he has been paid the sum of \$240, leaving \$237.15 still due with respect to those charges.

It is contended on the part of the defendant that there should be no recovery against him in this case, because he bought this ice on the representations made by the plaintiff, relying thereon, and that the ice was not what he bargained for. The rule of law with regard to these matters, in the light of which you must examine this testimony, is this: A party having an article to sell represents what he thinks the article to be. If he submits it to the inspection of the other party, and the other party has ample opportunity to examine it, and, having done so, or refused so to do, when opportunity is given him, accepts it, he is bound by the bargain he thus makes, so that there are no after inquiries in respect to it. Hence the primary question, and the strain of this controversy, is, did the defendant ac-

<sup>1</sup> Reported by Benj. F. Rex, Esq., of the St. Louis bar.