

property rights given by the statute. In the same case it is also held that the rules adopted by this court were within the scope and power of the court, and such as it was not only the right but the duty of the court to adopt. This court, by the rules of 1878, provided that redemption should be made by a judgment creditor from a sale under a judgment or decree of this court, by the creditor suing out his execution in the ordinary manner on his judgment, placing his execution in the hands of the proper officer to execute, and paying the money needed to redeem into the hands of the clerk of this court, together with the commissions of the clerk for receiving and paying out the money. The redeeming creditor in this case ignored these rules, and undertook to make a redemption by paying his money to an officer not known to this court, and not within its control, and with whom the court had no relations whatever, and with whom, it seems to me, it is not in the power of the redeeming or judgment creditor to bring the complainant or this court into relations. The complainant, being a non-resident corporation, had the right to seek this forum as the one through which it would enforce its lien on these lots, and was not obliged to look to any state court or its officers for the purpose of obtaining the money, after this court had made rules of procedure.

I am therefore of opinion that, upon the showing made by this bill, the redemption was totally void, and that the demurrer to the bill should be overruled.

REED v. ATLANTIC & P. R. Co.

(Circuit Court, S. D. New York. August 26, 1884.)

DECISION OF COURT OF CO-ORDINATE JURISDICTION—ATLANTIC & PACIFIC RAILWAY COMPANY—RIGHT TO DIVIDENDS.

As it has been decided by a court of co-ordinate jurisdiction, in an action brought by the Pacific Railroad (of Missouri) to recover, among other things, the dividends agreed to be paid to its stockholders by the defendant in the lease between the two corporations, that the right of action for the dividends is in the corporation and not in the individual stockholders, this court, in a suit upon the same lease, brought by one of the stockholders to recover part of the same dividends, follows that decision, and judgment for defendant is ordered.

At Law.

E. L. Andrews, for plaintiff.

Geo. Zabriskie and *John E. Burrill*, for defendant.

WALLACE, J. It has been decided by a court of co-ordinate jurisdiction, in an action brought by the Pacific Railroad (of Missouri) to recover, among other things, the dividends agreed to be paid to its stockholders by the defendant in the lease between the two corporations, that the right of action for the dividends is in the corporation and not in the individual stockholders. It would be unseemly for this

court, in a suit upon the same lease brought by one of the stockholders to recover part of the same dividends, to hold the contrary. Such a decision might result in two judgments against the defendant for the same dividends. Under such circumstances, as was well said in *Goodyear Dental Vulcanite Co. v. Willis*, 1 Ban. & A. 573: "Every suggestion of propriety and fit public action demands" that the decision made "be followed until modified by the appellate court."

Judgment is ordered for defendant.

ROGERS and others v. BOWERMAN.

(Circuit Court, S. D. New York. August 22, 1884.)

PRACTICE AND PROCEDURE—REMITTING PART OF VERDICT—WHEN ALLOWED—
RIGHT OF APPEAL.

A trial court, in a meritorious case, will not allow a plaintiff to remit a part of the amount for which a verdict has been rendered, when such reduction will deprive the defendant of an opportunity to have the decision reviewed in an appellate court.

At Law.

Wheeler & Souther, for complainants.

WALLACE, J. The plaintiffs ask leave to remit part of the amount for which the verdict in this case, by direction of the court, was rendered in their favor. The result, if such a reduction of the judgment to be entered is permitted, would be to reduce the judgment below the sum of \$5,000, and thereby preclude the defendants from a review by writ of error to the supreme court. Undoubtedly, it is competent for the trial court, in the exercise of judicial discretion, to allow such a reduction to be made; but such a discretion should be very carefully and sparingly exercised. Certainly, this is not a case where the court should willingly deprive the defendants of an opportunity to review the decision. As is said in *Thompson v. Butler*, 95 U. S. 694, 696, "if the object of the reduction is to deprive an appellate court of jurisdiction in a meritorious case, it is to be presumed the trial court will not allow it to be done." It is far from clear that the plaintiffs were entitled to recover, and a verdict was directed for them with grave doubt as to the correctness of the conclusions reached by the court. It is a peculiarly meritorious case for the consideration of the appellate court.

The motion of the plaintiffs is denied.