

dred dollars, I apprehend it is the duty of the court to dismiss; although, if he had sued in good faith to recover more than five hundred dollars, the fact that the verdict for a less sum was obtained, would not deprive the court of jurisdiction, and would only affect his right to costs." Here the plaintiffs must have known when they brought their suit that the amount of their recovery would be less than \$500. Suggestion was made on the argument that if the plaintiffs could not recover in this court they were without remedy; for they could not sue in the state court, and the time within which they might have presented their demand to the probate court for allowance, under the state statute, had long since elapsed. The want of remedy in other courts constitutes no reason for affording a remedy in this court. Indeed, the very suggestion leads this court to apprehend that the plaintiffs brought their suit in this court because they had lost their remedy in any other court, and hoped to successfully invoke the jurisdiction of this court by asserting a demand, concerning the greater part of which there could be no dispute, because, as they admit, it had been previously paid. Suit dismissed, with costs, except attorney's fees.

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**MAYOR, ETC., OF THE CITY OF KNOXVILLE v. KNOXVILLE & O. R. Co.**

(Circuit Court, E. D. Tennessee. December, 1884.)

**1. CORPORATIONS—ULTRA VIRES.**

The powers of a corporation are only such as are conferred by law. Everything done by a corporation in excess of such authority is voidable at the instance of the parties interested in and injuriously affected thereby.

**2. SAME—CHARTER A CONTRACT—LEGISLATURE CANNOT IMPAIR—TRANSFER OF FRANCHISE.**

Where the charter of a railroad corporation did not authorize the transfer of its franchise and other property to another corporation, upon the assumption by the latter of all the duties and obligations of the former, and upon issuing to the stockholders of the former an equal amount of the stock of the latter corporation, *held*, that it was not competent for the legislature, by authorizing such transfer, to do more than to waive the rights of the public. It could not divest or impair the rights of the stockholders as between themselves, as guaranteed by the company's charter, without their consent.

**3. SAME—VOIDABLE CONVEYANCES—LACHES.**

In this case there has been no such laches as to preclude the assertion of the dissenting stockholders.

**4. SAME—ULTRA VIRES CONVEYANCES—SUBSEQUENT MORTGAGE—INNOCENT BONDHOLDERS.**

Where a corporation unauthorizedly made a conveyance of its property, and the transferee subsequently mortgaged the same to secure certain bonds which were sold for value without actual notice of the defect in the title, *held*, that they are charged with notice of such defect, it being apparent upon the face of the first conveyance; and the first conveyance being set aside, the mortgage will be removed as a cloud upon the title. But in this case an account is ordered between the parties to said conveyance, and the transferee will be entitled to a lien for any balance found due, and to a sale of the property, the proceeds to be

subject to such disposition in favor of the trustee under the mortgage as the court may think equitable.

5. SAME—SUBSTITUTION OF STOCKHOLDERS.

The transferee under the conveyance thus avoided, having issued its own stock in place of some of the stock of the grantor surrendered as stipulated in the conveyance, it is entitled to be substituted to the rights of the surrendering stockholders.

In Equity.

*Luckey & Yoe*, for mayor and aldermen of Knoxville.

*Henderson & Jouralman*, for Knoxville & O. R. Co.

*Wm. M. Baxter*, for East Tennessee, V. & G. R. Co.

*Andrews & Thornburgh*, for Central Trust Company of New York.

BAXTER, J. The Knoxville & Kentucky Railroad Company, organized in 1855, was created to build a railroad from Knoxville to the Kentucky line, in the direction of Louisville and Cincinnati. The city of Knoxville subscribed \$100,000 to its capital stock. After constructing 38 miles of road, the company became insolvent and unable to complete its undertaking. Thereupon the state, to which it was largely indebted for bonds loaned it under and pursuant to the internal improvement act of February 11, 1852, and acts amendatory thereof, instituted a suit in the chancery court for Davidson county, to foreclose the statutory lien reserved on said company's road and other property, for the state's indemnity; and under decrees rendered therein the same were sold to W. B. Johnson and associates for \$350,000. In virtue of this purchase the purchasers became entitled, under section 1507a, par. 21, T. & S. Code, to apply to the chancery court of either of the counties through which said railroad ran, to be substituted to all the rights, privileges, and immunities, and subjected to all the liabilities of the acts of incorporation under which said Knoxville & Kentucky Railroad Company was organized, and the acts amendatory thereof, and to such change of name as they might desire; and it was by said act made the duty of the chancellor, upon the production of satisfactory evidence, to declare the purchasers "a corporation," and "fully clothe them with the powers, privileges, and immunities" conferred by said original charter and amendments thereto. The purchasers accordingly made an application in conformity with the requirements of said act, and were, pursuant thereto, duly declared a body, politic and corporate, by the name of the Knoxville & Ohio Railroad Company, and invested with all the powers, rights, privileges, and immunities theretofore conferred on the Knoxville & Kentucky Railroad Company.

The legal effect of the foregoing proceedings was to foreclose the state's lien on the road, franchises, and property of the Knoxville & Kentucky Railroad Company, and extinguish all the interest which the stockholders therein had in said corporation, and vest the same in the Knoxville & Ohio Railroad Company. But, in the organization of said last-named company, the purchasers (after incumbering their road, franchises, and other property with a mortgage to secure the