

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 & Jourolman, 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

payment of \$500,000 of 7 per cent. bonds issued by said company) fixed the capital stock at something over \$1,100,000, of which they retained two-thirds, and gratuitously distributed the balance among the stockholders of the old company, giving \$100,000 thereof to the city of Knoxville.

The organization of the Knoxville & Ohio Railroad Company occurred in 1871. Upon its organization the company took possession of and operated its road until July 1, 1881, applying its earnings to the payment of interest on its bonded debt, to the repairing and betterment of its property, and to the acquisition of necessary equipment. During this interval, and shortly before the sale complained of herein, the Knoxville & Ohio Railroad Company entered into an agreement with the East Tennessee, Virginia & Georgia Railroad Company, whereby the latter company undertook to advance to the former company enough money to extend said last company's road from its northern terminus at Caryville to the Kentucky line. Under this contract it advanced between twelve and fifteen hundred thousand dollars, no part of which has been repaid. The extension was made, thereby securing a valuable connection with the Louisville & Nashville system at Jellico, and opening up a new and important railroad line through a rich and extensive country not previously penetrated by any railroad. The Knoxville & Ohio Railroad Company, being unable to repay the money, so as aforesaid advanced to it by the East Tennessee, Virginia & Georgia Railroad Company, did, on the eighth of July, 1881, pursuant to a resolution adopted by a large majority of its stockholders in a meeting duly called for that purpose, make and deliver its deed conveying its road, franchises, and *all* other property to the East Tennessee, Virginia & Georgia Railroad Company; and, in consideration thereof, said last-named company undertook and agreed to pay all the liabilities of the vending company, including the advances aforesaid, and issue to its stockholders of the "common stock" of the East Tennessee, Virginia & Georgia Railroad Company an amount, at its face value, equal to the stock, respectively, owned by them in the Knoxville & Ohio Railroad Company. The stock owned by the city of Knoxville in the Knoxville & Ohio Railroad Company was not represented in the stockholders' meeting that authorized the sale complained of; nor has the city since either ratified or dissented from said sale, until the commencement of this suit. Immediately after the conveyance of said road, franchises, and property, by the Knoxville & Ohio Railroad Company, as aforesaid, to the East Tennessee, Virginia & Georgia Railroad Company, the latter company, by two separate conveyances, mortgaged its entire property (including that conveyed to it by the Knoxville & Ohio Railroad Company) to the Central Trust Company of New York to secure the payment of a large number of first mortgage and certain income bonds, which it had issued and sold for value to *bona fide* purchasers. These mortgages were, a few days after their execution, duly probated and registered in each of the several states pen-

etrated by the East Tennessee, Virginia & Georgia Railroad Company's roads, upon the faith of which the bonds secured thereby were negotiated.

Following all this, on the twenty-third of June, 1883, the mayor and aldermen of Knoxville filed a bill, for and in behalf of said city and all other stockholders of the Knoxville & Ohio Railroad Company having a common interest with the city in the litigation, in the chancery court, Knox county, Tennessee, against the Knoxville & Ohio and the East Tennessee, Virginia & Georgia Railroad Companies and the Central Trust Company of New York, praying for a decree annulling the conveyance made by the Knoxville & Ohio Railroad Company to the East Tennessee, Virginia & Georgia Railroad Company, and declaring the mortgages made by said last-named company to the Central Trust Company of New York, hereinbefore mentioned, a cloud upon the title of the Knoxville & Ohio Railroad Company's property embraced therein, and removing the same. It was therein alleged that the complainant, the city of Knoxville, owned, in its corporate capacity, \$100,000 of the capital stock of the Knoxville & Ohio Railroad Company; that the conveyance sought to be annulled was made without its consent and in fraud of its rights. This was the general ground upon which the prayer for relief was predicated, and, among other specific charges in support of that general allegation, the complainant averred that the East Tennessee, Virginia & Georgia Railroad Company had acquired the ownership of a majority of the capital stock of the Knoxville & Ohio Railroad Company, through and by means of which it controlled said company and secured the passage of the resolution authorizing the conveyance to itself of the road, franchises, and property of the Knoxville & Ohio Railroad Company. But it contained no allegation that it had made any effort to induce the Knoxville & Ohio Railroad Company to institute and prosecute a suit, or take any other action, for the redress of the wrong complained of in the bill.

The Knoxville & Ohio Railroad Company answered, denying the alleged fraud, but substantially admitting all the other charges of the bill. It then averred that it had not been requested by complainant, or any other person in its behalf, to take any step to "set aside the deed of July 8, 1881," and declared that no complaint had been made by any one thereof, and avowed its willingness, if the complainant desired it to do so, to institute and prosecute a suit for the relief prayed for by the complainant; and thereupon made its answer (as under the state practice it had the right to do) a cross-bill, and therein substantially reiterated all the allegations contained in the complainant's bill, and confessed by its answer, and prayed for the same relief demanded in the complainant's original bill. The East Tennessee, Virginia, & Georgia Railroad Company also answered and denied the alleged fraud, but admitted all the other material facts, and added that it would "make no controversy touching said

conveyance," and consented to a decree setting the same aside, provided an equitable adjustment of the accounts between it and the Knoxville & Ohio Railroad Company is decreed and appropriately enforced. The Central Trust Company of New York entered its appearance, and demurred to the complainant's bill, on the ground that complainant had not brought the case within the requirements of the ninety-fourth rule—recently promulgated by the supreme court—to-wit, that complainant had not averred any request, or shown other effort, to induce the Knoxville & Ohio Railroad Company to take steps to redress the wrong alleged to have been done to said corporation,—of which the city was a stockholder,—and of which it complained. But before any action was had upon this demurrer, the suit was, upon the application of said trust company, removed to this court. The demurrer was here considered and sustained, and, the complainant admitting that it could not amend so as to bring its case within the purview of the rule, a decree was passed, dismissing its bill. From this it will be seen that the controversy left rests upon the cross-bill of the Knoxville & Ohio Railroad Company, and the answers thereto of the East Tennessee, Virginia, & Georgia Railroad and the Central Trust Companies, and the evidence adduced by the parties in support of their respective positions.

In behalf of the Central Trust Company it is contended (1) that the deed of July 8, 1881, vested the East Tennessee, Virginia & Georgia Railroad Company with a good title to the property it purports to convey; or (2) if it does not vest such title, the complainant, by its acquiescence, is estopped from denying the fact; and (3) that the *cestuis que trust* represented by the complainant are innocent holders, for value, of the bonds secured by the mortgages in question, and that their equities are superior to those of the dissenting stockholders, for whose benefit this suit is being prosecuted.

The determination of these questions necessitates an inquiry into the powers of the Knoxville & Ohio Railroad Company. Was it legally endowed with power to make said conveyance? The powers of corporations 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. The powers of the complainant corporation are prescribed by the original and amendatory acts which constitute the Knoxville & Kentucky Railroad Company's charter. These contain the contract (1) between the state and said corporation, and (2) between the stockholders therein. Under their provisions the complainant was authorized to complete, and impliedly charged with the duty of operating, its road. But there is no provision of any one of these acts which, by implication or otherwise, authorized it to transfer its immunities and obligations, as by its conveyance it assumed to do, to the East Tennessee, Virginia & Georgia Railroad Company; and this is one ground upon which it is insisted, in complainant's behalf, that nothing passed under said deed.