to be imputed to the act which (it is supposed) fixes such limitation to suits against the sheriff.

The defendant is a citizen of the state of Tennessee, and was not within the Western district of Pennsylvania at the institution of the action, which was commenced by writ of foreign attachment; but the defendant voluntarily entered a general appearance and pleaded to the merits, and therefore it was too late for him at the trial to question the jurisdiction of the court over him. *Toland* v. *Sprague*, 12 Pet. 300.

The sheriff's return, while *prima facie* evidence in this action against the defendant, is not conclusive upon him, (*Hyskill* v. *Givin*, 7 Serg. & R. 368; 1 Whart. Ev. § 833*a*;) and hence we are at liberty to consider the facts *dehors* the return found by the court. The defendant did not personally bid; but Archibald Blakeley, Esq., assuming to act in his behalf, made the bid in the defendant's name, upon which the sheriff knocked down the property to him. In so doing, Mr. Blakeley acted under a serious misapprehension. Forgetting that a judgment of a date anterior to a mortgage the defendant held against the property, although unsatisfied of record, had in fact been paid to Mr. Blakeley himself, he made the bid, supposing that the sale would divest the mortgage. But that judgment being satisfied in fact, and the sale being on a lien junior to the mortgage, the purchaser took subject to the mortgage. Hence, while Mr. Blakeley's bid was $7,500, that made by Mr. Patterson, the purchaser at the resale, was $50 only.

Now, whether or not the mistake of fact, under which the bid here was made, would of itself be an available defense to this action, it is not necessary to determine; for, as it seems to me, there lies back of that mistake a complete defense in Mr. Blakeley's want of authority to bid at all for the defendant. His only warrant was the letter of attorney under which he assumed to act. By that instrument he was constituted the defendant's attorney to collect debts, and commence and prosecute suits therefor, and to appear for the defendant in, and defend against, all actions at law or in equity, or otherwise, which might be brought affecting in anywise his property and rights. Surely, the purchase of real estate was not within the scope of these designated powers. Besides, in this particular transaction, Mr. Blakeley was neither prosecuting nor defending any action in behalf of this defendant. Bohlen was a stranger to the execution in the hands of the sheriff, and the sheriff's sale did not in any manner concern him, or affect his rights as mortgagee. But had the effect of the sheriff's sale been to divest the lien of the mortgage, and turn the defendant over to the proceeds of sale, still Mr. Blakeley would have lacked authority to bind him by bidding in his name on the property. The powers conferred upon Mr. Blakeley were not those of a general agent, but, at the most, were such only as ordinarily appertain to the relationship of attorney and client. Now, while an attorney at law has

large discretionary powers in the conducting of a suit, beyond this his agency is very much restricted, and he cannot substitute land for money. *Holker* v. *Parker*, 7 Cranch, 436; *Gable* v. *Hain*, 1 Pen. & W. (Pa.) 264; *Stackhouse* v. *O'Hara*, 14 Pa. St. 88; *Mackey's Heirs* v. *Adair*, 99 Pa. St. 143; *Isaacs* v. *Zugsmith*, 103 Pa. St. 77.

Is the defendant estopped from defending here by reason of the proceedings in respect to these sheriff's sales which Mr. Blakeley instituted and conducted in the court of common pleas? Upon the erroneous assumption that he had authority to bid for Bohlen, and, it would seem, still possessed with the idea that the Bohlen mortgage had been divested by the sheriff's sale, and hence that Bohlen was entitled to a special return as a lien-creditor purchaser, Mr. Blakeley, upon his own affidavit, obtained a rule in the court of common pleas to show cause why the second sale should not be set aside. That rule the court, after a hearing, discharged. How does any estoppel hence arise? It is said in *Aspden* v. *Nixon*, 4 How. 467, that the essential conditions of an estoppel from a *res judicata* are that the judgment or decree relied on must have been made by a court of competent jurisdiction, upon the same subject-matter, between the same parties, for the same purpose. It must appear on the face of the record, or be shown by extrinsic evidence, that the precise question was raised and determined in the former suit. *Russell* v. *Place*, 94 U. S. 606.

Now, this latter condition is not fulfilled here, even if it be conceded that the other elements of an estoppel exist. The question of the defendant's liability upon the bid made in his name by Mr. Blakeley was not before the court. The application was not to set aside the first sale, or to relieve the bidder at that sale, but it was to set aside the sale to Mr. Patterson. In refusing the application, the court merely held that the second sale was regular, and that no good reason appeared for disturbing it. Beyond this there was nothing decided. And when the rule to show cause was discharged, the case stood precisely as it did before the rule was granted.

Upon the facts found, I am of the opinion that the plaintiff is not entitled to recover; and, accordingly, the court finds in favor of the defendant. Let judgment be entered, upon the finding of the court, in favor of the defendant, with costs.

DAVIS v. MEMPHIS CITY RY. CO.

(*Circuit Court, W. D. Tennessee.* February 6, 1885.)

1. CORPORATIONS—LIABILITY OF OFFICER OR DIRECTOR—FRAUDULENT SALARIES.
   If an officer holding or controlling a majority of the stock should pack a directory with his special friends, and they desert the interest of the company by granting an excessive salary to him, their action is fraudulent, and he cannot recover the salary in a suit at law. Mere error of judgment, however, by the directory, acting honestly in fixing a larger sum than prudence would justify, does not constitute a valid defense.
2. SAME SUBJECT—MALADMINISTRATION—COUNSEL FEES—DAMAGES—WRONGFUL EXPENDITURE OF CORPORATE FUNDS.
   Where a corporation, in a suit by its president for his salary, pleaded, by way of set-off, the wrongful expenditure of its funds for counsel fees, *held*, that although it was his duty to consult the directory before incurring the expense, if he acted for the interest of the company in good faith, and did only what the directory might reasonably, and should properly, have done for the benefit of the company, he is not liable in damages by way of set-off, or otherwise.
3. SAME SUBJECT—ADDITIONAL COUNSEL—PERSONAL SUIT—RATIFICATION BY DIRECTORY.
   Nor is he liable, although the corporation had a regular attorney, for the employment of additional counsel in a suit against him and the other directors, personally, for maladministration, if the suit involved also the interest of the corporation, and the expenditure was reasonable and beneficial to the company, particularly where the directors knew of the employment, and made no objection.
4. SAME SUBJECT—STOCKHOLDERS—FACTIONAL STRIFE—CHANGE OF MANAGEMENT—SUPERVISION OF COURTS.
   Where a factional strife among the stockholders is ended by a compromise, and the majority changes, a court will not, on a suit by the president for his salary, undertake to review the merits of that litigation and apply it as a test to the conduct of the president whether his alliance of the company with the one faction or the other was for its best interest or not. That matter is within the reasonable and honest discretion of the directory, and the courts will not supervise it by such a proceeding.
5. SAME SUBJECT—SICKNESS OF OFFICER.
   The fact that an officer is absent on account of sickness is not a defense against his claim for salary, if he procures the proper discharge of his duties by another officer authorized to act in his absence, and there be no injury to the company by reason of the absence.
6. NEW TRIAL—WEIGHT OF EVIDENCE.
   While a court will protect the parties against improper verdicts, it will not impair the right of trial by jury under the disguise of determining whether the verdict is against the weight of the evidence.

Motion for New Trial.

The suit was for $1,650, balance due Davis for his salary at the time he resigned from the company and turned the management over to the new parties who purchased his interest. The defense was that Davis had fraudulently procured the directors to fix his salary at an excessive sum, and that he had paid large sums of money, amounting to over $2,000, to Humes & Poston, as attorneys in the chancery case of *Bills* v. *Davis*, and the other directors, for a maladministration of the affairs of the company; the contention being that it was a suit against Davis, Barrett, and others, individually, in which the com-