7 Sup. Ct. Rep. 542, it was held that where a board of directors, when notified of what had been done by their agents, did not disaffirm their action within six months, the disaffirmance came too late. This doctrine was affirmed in *Pennsylvania Ry. Co.* v. *Keokuk & H. Bridge Co.*, 131 U. S. 371–381, 9 Sup. Ct. Rep. 770, as follows:

"When the president of a corporation executes in its behalf, and within the scope of its charter, a contract which requires the concurrence of the board of directors, and the board, knowing that he has done so, does not dissent within a reasonable time, it will be presumed to have ratified his acts."

And the same doctrine was again affirmed in *Construction Co.* v. *Fitzgerald*, 137 U. S. 109, 11 Sup. Ct. Rep. 36.

The decree appealed from should be affirmed; and it is so ordered.

CITY OF NEW ORLEANS *v.* PEAKE.

(Circuit Court of Appeals, Fifth Circuit. June 23, 1892.)

No. 46.

1. APPEALABLE DECREE—FINALITY—CONFIRMATION OF SALE.
A creditor of the drainage fund held in trust by the city of New Orleans caused a receiver of the fund to be appointed, to whom, by order of court, a regular notarial transfer of its assets was made. Thereafter the receiver sold the property, and the court confirmed the sale. *Held*, that the decree of confirmation was a final decree, from which an appeal would lie to the circuit court of appeals, since it finally disposed of the possession and ownership of the property.

2. APPEAL—PARTIES.
It appearing from the record that the city was the main defendant in the court below, and that it claimed to be a large creditor of the fund, and entitled to preference over other creditors, it had an interest entitling it to appeal from the decree, notwithstanding that its title to the property was divested by the notarial transfer.

3. JUDICIAL SALE—VALIDITY—VARIANCE BETWEEN ORDER AND ADVERTISEMENTS.
The order of sale directed the delivery to the purchasers of good and valid titles free from all liens, mortgages, or incumbrances. In the advertisements of the sale the words "and taxes" were added. *Held* that, in the absence of objection by the purchaser, this variance was immaterial, especially as it appears to be the duty of the receiver, under Rev. St. La. § 3147, to either sell property free of taxes, or see that the taxes are paid before passing title.

4. SAME—SALE IN BLOCKS—STREETS.
The fact that the property was advertised and sold in blocks intersected by public streets does not show that the court either ordered or approved a sale of the fee in the streets, when it appears that the sale was in the same lots or blocks existing when the city acquired title, and when the property was transferred to the receiver by the notarial act, and that a large plat, showing the position of the streets, was exhibited at the sale, thus charging the purchasers with notice of their location.

5. SAME—SUBDIVISION.
It was not unlawful to sell the property in such blocks, when it appears that to survey and subdivide it would be very expensive, and without substantial benefit.

Appeal from the United States Circuit Court for the Eastern District of Louisiana.

In Equity. Bill by James W. Peake, a judgment creditor of the drainage fund of New Orleans, in his own behalf, as well as in behalf of other parties similarly situated, against the city, as trustee of the

fund, to close and liquidate the trust. A receiver was appointed to sell the property belonging to the fund, and the court below confirmed the sales made by him. The city appeals. Affirmed.

For decisions in prior litigation between the same parties, see 38 Fed. Rep. 779, and 11 Sup. Ct. Rep. 541.

E. A. O'Sullivan and *Henry Renshaw*, for appellant.

Richard De Gray and *Chas. Louque*, for appellee.

Before PARDEE and MCCORMICK, Circuit Judges, and LOCKE, District Judge.

PARDEE, Circuit Judge. The appellee, a large judgment creditor of the drainage fund held in trust by the city of New Orleans, filed his bill in the circuit court to close and liquidate the trust. After proceedings had thereon, a receiver was appointed, who caused an inventory of the property and assets of the fund to be made, and filed in the record. The court afterwards compelled the city of New Orleans to make a regular notarial transfer of these assets to the receiver. Thereafter the receiver applied to the court as follows:

"The petition of J. W. Gurley, receiver, in the case of *James W. Peake* v. *The City of New Orleans*, No. 12,008, with respect shows: 'That an act of transfer and assignment, executed in conformity to the orders of this honorable court, of dates 13th June, 1891, and December 5, 1891, and December 31, 1891, by the defendant, the city of New Orleans, of the property involved in this cause, is now on file, together with an inventory of the property transferred, made by Jos. D. Taylor, notary public; that it is necessary, in the interest of all parties, that said property be sold, and the proceeds thereof be brought into court to abide its further order; wherefore he prays for an order directing him to sell the said property at public auction, after due advertisement, for cash, and authorizing and empowering him to execute and deliver to the purchasers thereof good and sufficient titles, free from all liens, mortgages, and incumbrances, at the expense of such purchasers, if any.' "

And thereupon the following order was granted:

"Let the receiver sell the property contained in the said inventory, as prayed for, after advertisement in two newspapers, published in the city of New Orleans, viz., one published in the English and one in the French, for the term required by law for judicial sales of real estate at public auction, to the highest bidder for cash; and let the receiver be authorized and empowered to execute and deliver to the purchasers good and valid titles, free from all liens, mortgages, or incumbrances, if any there are.

[Signed] "EDWARD C. BILLINGS, Judge."

In accordance with the order thus obtained, the receiver advertised for sale and made sale of a large portion of the lands embraced in the inventory. After the sale the receiver made full report, showing, among other things, what he had sold, and the prices received for the different lots. The aggregate receipts for all the lots sold were $3,380. Upon this report the court ordered that the same be filed, and noted of record; and, further, that, if no opposition to the confirmation of said report of sales be made within eight days from the filing of said report, the same be and stand confirmed, and that the receiver proceed to

give title to the purchasers. Thereupon the city of New Orleans filed an opposition to the report of the receiver, setting forth the grounds of objection at length. After hearing evidence the court confirmed the sale, except as to one square of ground, on which the Dublin street draining machine is located. From this decree the city appealed.

In this court the motion is made to dismiss the appeal, on the grounds:

"(1) That the judgment appealed from is not a final judgment under section 6 of the laws of congress establishing the circuit courts of appeal, approved March 3, 1891. That no appeal lies to this court, except from a final judgment. (2) That the city of New Orleans shows no interest to appeal, inasmuch as she divested herself of all interest in the property sold by the act of transfer executed by her before J. D. Taylor, notary public, on the 11th of February, 1892."

This motion to dismiss is not well taken. The decree appealed from finally disposes of the possession and ownership of property. *Forgay v. Conrad*, 6 How. 201; *Ex parte Norton*, 108 U. S. 237, 2 Sup. Ct. Rep. 490. The record shows that the city of New Orleans is not only the main defendant in the suit below, but that she claims to be a creditor of the drainage fund to a large amount, and entitled to be paid by preference over other creditors; thus showing a direct interest in the funds to be obtained by the sale of the property in question.

The following is the assignment of errors:

"(1) That, there being a variance between the order of sale and the advertisement herein, in this: that the order of sale directed the delivery to the purchasers of good and valid titles, free from all liens, mortgages, or incumbrances, whereas the advertisement reads, 'free of all liens, mortgages, incumbrances, and taxes,'—the court erred in holding, as it did, that the said variance could be cured by the assumption by the purchasers of such taxes as might be due. (2) That the court erred in holding, as it did, that the advertisement under which the receiver proceeded to sell was legal, adequate, and sufficient to furnish the basis of acts translative of property; and that the court erred especially in confirming, as it did, sales of property which, according to said advertisement, include the public streets of the city of New Orleans, said streets being inalienable. (3) That the court erred in not holding as unlawful the including of many pieces of property under a single head, as forming one block, and in not holding to be unlawful the offering for sale and adjudication herein of the aggregated pieces of property in block. (4) That the court erred in overruling the objections made by the city of New Orleans to the receiver's report, and to the confirmation of the alleged sales, in said report mentioned, and that, according to the evidence and the law applicable thereto, there should have been a decree in favor of opponent, the city of New Orleans, maintaining its opposition in all and singular the parts thereof, with costs."

1. The variance suggested between the order of sale and the advertisement as made does not prejudice the appellant. Besides, it appears to be the duty of the receiver, under the state law, (Rev. St. La. § 3147,) to either sell property free from taxes, or to see that the taxes are paid before passing title. Selling the property free from taxes tended to enhance the selling price. As the purchaser seems to be satisfied, there is no ground for contest.

2. The examination of the record shows that the receiver advertised and sold the property in lots according to the inventory which he had filed in court, and according to the act of transfer of the city of New Orleans to the receiver. In addition to this, it appears that the receiver was authorized by the court to employ, and did employ, a surveyor, who made a large plan, which was exhibited at the sale. The purchasers were thus fully charged with notice with regard to the public streets which intersected and subdivided some of the tracts of land sold; and, as said above, the purchasers, with full notice, seem to be satisfied. The contention that by the sale of the property under the advertisement the court either ordered or approved the sale of the public streets is not tenable.

3. As stated above, the sale of the property was made in the same lot or blocks as it was acquired by the city of New Orleans, the trustee of the drainage fund, and as transferred by the city to the receiver. The record shows that to have it surveyed and subdivided in smaller lots would be very expensive, and without substantial pecuniary result.

4. This is a general assignment that the court erred, the particular grounds being covered by the first three assignments. The opposition of the city of New Orleans to the confirmation of the sales made by the receiver is not accompanied with any averment that the property has been sold at an inferior price, or that a resale would furnish an advanced price, while the weight of the evidence is to the effect that the property brought fair prices, considering its character and location, and that a readvertisement and sale would cost more than any possible increase of price that could be obtained. We conclude that there is no error in the decree appealed from prejudicial to the appellant, and the same is affirmed.

FLORIDA LAND & IMP. CO. *v.* MERRILL *et al.*

(*Circuit Court of Appeals, Fifth Circuit.* June 24, 1892.)

No. 48.

1. SALE—RESCISSION—FRAUDULENT REPRESENTATIONS.
A large tract of land was sold at an agreed price, a certain portion to be paid in cash and balance to be secured by mortgage. Subsequently the seller was induced, by false representations in regard to the solvency of a bank, to accept stock in it as part payment of the balance of the purchase price. The purchaser, who was president of the bank, organized a joint-stock company, and conveyed the land to it, taking mortgage bonds in payment, which were delivered to the bank in consideration of prior indebtedness to it. The bank and the intermediate parties knew of the fraudulent transaction. The bank soon after was declared insolvent, and a receiver appointed. *Held* that, since the bank was the real vendor of the stock, the seller was entitled to a complete rescission of the fraudulent sale.

2. SAME—SALE OF BANK STOCK—RIGHTS OF CREDITORS.
When bank stock is fraudulently sold, and the proceeds are turned over to the bank, and a receiver is subsequently appointed, no creditor of the bank can be said to have any such interest in the proceeds as would prevent restitution and a rescission of the sale; and such appointment of a receiver does not in itself show that there are creditors of the bank who had prior equities.