

## FISHER et al. v. BOARD OF LIQUIDATION OF CITY OF NEW ORLEANS.

(Circuit Court, E. D. Louisiana. May 29, 1893.)

No. 12,174.

**MUNICIPAL CORPORATIONS—FUNDING OF INDEBTEDNESS—JUDGMENTS.**

AN owner of a judgment recovered against the board of directors of the city schools of New Orleans for teachers' salaries accruing between 1872 and 1880 is not entitled to have bonds issued therefor by the board of liquidation of the city, for by Act La. 1884, No. 67, § 2, and the constitutional amendment of 1890, the only judgments which the latter board is authorized to fund are judgments against the municipality of New Orleans.

Application by Mrs. M. M. Fisher and others for a writ of mandamus to the board of liquidation of the city of New Orleans. Denied.

Louque & McGloin, for relators.  
Henry C. Miller, for respondents.

**BILLINGS**, District Judge. This case is submitted on an application for a mandamus requiring the respondents to issue bonds under Act No. 74, p. 84, of the Acts of 1880. That act provides that the city of New Orleans may issue bonds of the denomination of five dollars, having 10 years to run from July, 1880, bearing 3 per cent. interest. Section 3: "Be it further enacted that the said bonds may be issued to take up the unbonded valid indebtedness of the said city of New Orleans, and the unpaid salaries of school teachers, and expense of maintaining the public schools created since 1872, and prior to January 1, 1880." The application is based upon a judgment rendered by this court in favor of the relators against the respondents, the board of directors of the city schools of New Orleans, for salaries due Mrs. Fisher, one of the relators, and others teachers who had assigned their certificates to her. The salaries accrued in the years 1874, 1875, and 1876. Act 74 of the Acts of 1880 became a law on the 7th of April, three days after the legislature passed Act 133, p. 180, of the Acts of 1880, to liquidate the indebtedness of the city of New Orleans, and to apply its assets to the satisfaction thereof; to create a board of liquidation, prescribe their duties, and to provide for a fiscal agent, and for the levying of a sufficient tax to pay interest. This act creates the board of liquidation, and provides: Section 1 creates this board for the purpose of liquidating, reducing, and consolidating the debt of the city of New Orleans, as hereinafter specified. Section 3 deals with what sort of debts may be canceled and taken up by said bonds, and they are the entire valid debt of the city of New Orleans, except the floating debt created up to the date of the passage of this act, whether presented by bonds of various classes or by judgments. Section 5, that the city shall transfer to it all the property, both real and personal, which is to be disposed of by them, and placed to the credit of the city fund debt. Section 8 provides

that the surplus arising from the debt and interest tax, or from the sale of assets, shall be used to pay the interest on the bonds which the act authorizes, and, if any balance remains, for the retirement of the bonds themselves. The last section of the act (section 12) provides that all parts of all laws in conflict with that act are repealed. The bonds that were authorized to be issued were 50-year bonds, 4 per cents. In 1890 an amendment to the constitution of the state of Louisiana was proposed by the legislature, which was adopted by the people of the state. That amendment provides that all the funds received by said board of liquidation—that is, the respondents—from the sale of the constitutional bonds shall be used solely and exclusively for retiring by payment all the outstanding valid bonds of the city of New Orleans matured or subject to be called, including the certificates of bonds issued under the fourth section of Act No. 58 of 1882, and including judgments now or hereafter rendered on floating debt claims prior to 1879, entitled to be funded under Act No. 67 of 1884. The second section of Act No. 67 of 1884, which is thus made a part of the constitutional amendment, after specifying the term, denomination, and rate of interest of the bonds to be issued thereunder, made it the duty of the said board to retire and cancel the entire debt of the city of New Orleans, now in the form of executory judgments, and registered under the provisions of Act No. 5 of 1870, and that which hereafter may become merged into executory judgments and likewise registered, contains this provision: That it is the full intent and meaning of this act to apply solely the privileges thereof to executory judgments at present rendered against the city, and to such floating debt or claims against said city for 1878 and previous years, merged, and to be merged, into executory judgments, whether absolute, or rendered against the revenues of any particular year or years previous to the year 1879. It is thus seen that Act No. 74 of 1880 was qualified, and, so far as relates to the relators' claim, rendered nugatory, by Act No. 133 of the same year, above referred to. It is also seen that the amendment to the constitution proposed by joint legislature, Act No. 110, page 144 of the Acts of 1890, confines the authority to pay the floating debt of the city to such as are entitled to be funded under Act No. 67 of 1884, and that this last act (section 2) authorized the payment by the respondents only of judgments against the city that either have been rendered, or that hereafter may be rendered.

It seems to me, without passing upon the other points raised in the case, a sufficient answer to the petition of the relators is that they have no judgment against the city of New Orleans, and it is only judgments against that municipal corporation capable of being registered under Act No. 5 of the Acts of 1870 which, under the existing law, can be dealt with and funded by the board of liquidation.

**HARDEE et al. v. SUNSET OIL CO. et al.**  
 (Circuit Court, S. D. California. May 8, 1893.)

No. 315.

**1. CONSTRUCTION OF CONTRACT—CORPORATION PROMOTERS.**

R. agreed to convey certain property to H., or to a corporation to be formed by H., and H. agreed to pay R. \$5,000, to issue to him half of the capital stock of the corporation, and to deposit with the corporation's treasurer \$25,000 to be used in developing said property. *Held*, that the \$25,000 paid to the corporation should not be credited to R. on the books of the company.

**2. CORPORATIONS—DIRECTORS—APPOINTMENT OF RECEIVER—FRAUD.**

The directors of a corporation levied an assessment on its stock, and, on failure to pay same, advertised for sale only the stock of one who held nearly one-third of the entire stock, although other stockholders were also delinquent; it appearing, however, that the other stockholders had promised to pay. At a meeting of the directors at which only the president, secretary, and treasurer were present, they voted themselves salaries, which, however, they never collected. *Held*, that the action of the directors regarding their salaries was void, and that the irregularities are not sufficient to justify appointing a receiver for the corporation, it being shown that no actual fraud was intended.

**In Equity.** Bill by Nina Richardson Hardee and others against the Sunset Oil Company and others for an injunction, and the appointment of a receiver.

Smith & Winder and A. J. King, for complainants.

Sheldon Borden, for defendants other than Field, administrator.

Wells, Monroe & Lee, for Field, administrator.

ROSS, District Judge. The complainants are heirs of Cosmo B. Richardson, deceased, and brought this suit to enjoin the defendants from proceeding to sell certain shares of the stock of the defendant company, owned by Richardson at the time of his death, for a delinquent assessment thereon, and to annul a resolution passed by the board of directors of the defendant company, fixing the salaries of certain of its officers, and to procure the appointment of a receiver to take possession of the property of the corporation, because of alleged fraudulent mismanagement of the affairs thereof by the directors of the company. The case shows that Richardson was the owner of certain oil claims situate in the Camulos petroleum mining district, in Ventura county, of this state, and, being such owner, on the 16th day of June, 1890, entered into the following contract in writing with George W. Handy, of San Francisco, Cal.:

"Whereas, the party of the first part [Richardson] is the owner of eight hundred acres of petroleum oil territory in Camulos petroleum mining district, Ventura county, California, with water and timber thereon for fuel, hereby agrees with the party of the second part [Handy] to sell and convey to said party of the second part, or to any corporation which said second party may form, all his right, title, and interest in and to the following described oil claims, to wit, all those certain oil claims known and recorded in said Camulos petroleum mining district as the 'Bishop,' 'Atlanta,' 'Georgia,' 'Sparta,' and 'Savannah,' the same being all of section 12, and the south-east quarter of section 11, in township 4 north, range 19 west, San Bernardino