

with 10 per cent. interest, be tendered to the purchaser." Act No. 85 of the Acts of 1888, p. 133, § 64, provides as follows:

"That the tender required from the owner of property adjudicated to a purchaser for taxes due, in accordance with article 210 of the constitution, may be made to and deposited with the tax collector, etc.: provided, the same be made within the time required by said article: provided, further, that said tender to and deposit with the aforesaid officer can be made only when the purchaser cannot be found."

The provision that the tender can be made to the tax collector only in case the purchaser cannot be found shows that if he be found the tender must be made to him. Of course, before the expiration of the year the purchaser can sell and transfer his interests in the property, but this does not affect this specific provision as to how the owners are to redeem. No matter what price the purchaser receives for the property, the redemption by the owner can be effected by his tendering the price which the purchaser paid at the tax sale, and, under the statute, the original purchaser is made the party, who, in case of a sale of the premises by him, must be treated by his grantee as the person authorized to receive the amount to reimburse the purchaser for the amount he paid, with the statutory 10 per cent. interest. *Maumus v. Beynet*, 31 La. Ann. 462, holds that after the year for redemption has expired the vendee or the original purchaser may receive the deed of the property from the tax officer. This does not qualify at all the inference which must be drawn from the statute, that up to the expiration of the year the original owner has the right to relieve himself from all the effects of the tax sale by tendering to the original purchaser, if he can be found, the amount of the tax, for which the sale was made, with 10 per cent. interest. No question is made as to the amount of the tender. The question presented is, was the tender to the purchaser after a conveyance by him to another party according to the statute? I think it was. The decree must be that the defendants join in a conveyance to the corporation, the St. Louis, New Orleans & Ocean Canal & Transportation Company, for whose benefit the tender is in law presumed to have been made of the premises sold at the tax sale and fully described in the bill of complaint, and that defendants bear the costs of the suit.

WHEELWRIGHT v. ST. LOUIS, N. O. & O. CANAL TRANSP. CO.

(Circuit Court, E. D. Louisiana. May 25, 1893.)

No. 12,034.

1. MORTGAGES—CORPORATIONS—POWER OF DIRECTORS.

In a suit to foreclose a mortgage given by a New Jersey corporation upon property owned by it in Louisiana, it is no defense that at the time of executing the mortgage some of the directors were not residents of New Jersey.

2. SAME.

The mortgage is not invalidated by the fact that the directors went into New Jersey, and remained there only a brief period, to hold the meeting at which was passed the resolution authorizing the mortgage.

3. SAME—FORECLOSURE—TRUSTEE—BONDHOLDERS.

A trust deed given to secure an issue of corporation bonds, after conferring on the trustee a right to enter and hold possession, to sell, etc., declared that those remedies were merely cumulative, and additional to all other remedies allowed by law, and that the same should not be deemed to deprive the trustee "or the beneficiaries under this trust" of any legal or equitable remedy. Upon a default for six months in the payment of interest the whole series of bonds was to become due. The mortgagor was a New Jersey corporation, and the mortgaged property was in Louisiana. *Held*, that where the position of trustee was vacant, an owner of a majority of the bonds could, on the requisite default in interest, maintain a suit in a federal court for Louisiana in his own name to foreclose the mortgage for himself and the other bondholders, and the court would not compel him to go to New Jersey to have another trustee appointed.

4. PLEDGE—FORECLOSURE—VALIDITY OF SALE.

The fact that bonds of a corporation, which were legally pledged, by authority of the directors, for the purpose of carrying on construction work, were, on foreclosure of the pledge, sold for a small amount, does not affect the purchaser's title when no fraud is shown.

In Equity. Bill by William D. Wheelwright against the St. Louis, New Orleans & Ocean Canal Transportation Company to foreclose a mortgage given to secure an issue of bonds. A demurrer for want of jurisdiction, and a plea to the jurisdiction, were heretofore overruled. 50 Fed. Rep. 709. Decree for complainant.

Farrar, Jonas & Kruttschnitt, for complainant.
Gurley & Mellen, for defendant.

BILLINGS, District Judge. This cause is submitted on the bill, answer, depositions, and exhibits for final decree. It is a bill to foreclose a mortgage.

The defendant corporation was incorporated under the laws of the state of New Jersey, and was there domiciled. The charter of the corporation gives full power to execute the mortgage.

It is urged—First. That some of the directors did not reside in the state of New Jersey. Whatever force there might have been in this objection in case the state had brought a quo warranto against the corporation, there is no force in it in this proceeding. The board was elected by stockholders in the manner pointed out by the charter, and as against a creditor the directors are clearly competent. Second. It is urged, in the second place, that the directors went into New Jersey, and remained there only a brief period, to hold the meeting at which the resolution authorizing the mortgage was passed. This does not affect the validity of the resolution. My conclusion, therefore, is that the mortgage is a valid mortgage. The pledge to the Third National Bank of New York was authorized by a vote of the directors, and was made to the contractor, who was engaged in the work of perfecting the canal, and it seems to me was a valid pledge.

As to the foreclosure of the pledge, it seems to have been foreclosed in a manner strictly legal. The fact that at the sale under the foreclosure the bonds brought but little, there being no fraud shown, cannot impeach complainant's title. I think, therefore,

his title to the 265 bonds which he bought at this sale was complete.

It is urged by the defendant in the brief of its solicitor that the deed of trust constitutes a contract between the corporation and the holders of its bonds. Undoubtedly it does. The case of *Railroad Co. v. Orr*, 18 Wall. 471, is a case where each bondholder was by name mentioned in the mortgage, and of course, the suit to foreclose not having been brought in the name of all, was fatally defective. In the case of *Railroad Co. v. Fosdick*, 106 U. S. 47, 1 Sup. Ct. Rep. 10, the suit was authorized by only a minority of the bondholders. In this case the complainant holds 265 of the 500 bonds, and therefore holds a majority of the bonds secured by the mortgage. There is no trustee. The mortgage, in the first place, gives the right of entry and possession to the trustee. In the second place, it gives him the right to enter and sell, and gives him the right to proceed to enforce the rights of the bondholders by a suit in equity, either for a specific performance or in aid of the powers herein granted, or otherwise. It then provides:

"It being understood, and it is hereby expressly declared, that the right of entry and sale hereinbefore granted are intended as cumulative remedies additional to all other remedies allowed by law, and that the same shall not be deemed in any manner whatever to deprive the trustee or the beneficiaries under this trust of any legal or equitable remedy by judicial proceedings consistent with the provisions of these presents according to the true intent and meaning thereof."

All that the trustee was to do had to be done upon the written request of the holders of a majority of the bonds. There being no trustee, and the property being located here in Louisiana, it does not seem to me that the complainant should be compelled to resort to the dilatory measure of going to New Jersey and having another trustee appointed, but that he may avail himself of this clause last quoted; and, since he himself holds a majority in amount of the bonds, he may, as he has done, institute this suit in equity for a foreclosure of the mortgage for the benefit of himself and all who are similarly situated with him.

It is further urged that on only two occasions the coupons were presented,—on July 14, 1890, for \$30, and on February —, 1891, for \$90,—but the default for six months in the payment of the interest of any bond makes the principal and interest of all the bonds of that series to become due. If there had been a trustee, there could have been no procedure in the way of foreclosure of this mortgage, except upon the written request of the holders in majority amount of the bond; and it is further provided in article 4 that any holder or holders of bonds may institute a suit in equity for the foreclosure of this mortgage without giving 30 days' notice in writing to the trustee, etc. Since the mortgagor has allowed the office of trustee to become vacant, and since the complainant holds more than a majority of the outstanding bonds covered by the mortgage, and since six months have elapsed since the maturity of the coupons and default in their payment, I think he may for himself and others institute this suit; in other words, that the default in the payment

of the coupons, since there is no trustee, and since he is a holder of the majority of the bonds, authorizes his instituting the suit.

The decree must be in favor of complainant, maintaining the validity of the mortgage, and directing the sale of the premises prayed for.

STEWART v. ARMSTRONG.

(Circuit Court, S. D. Ohio, W. D. June 5, 1893.)

No. 4,459.

1. BANKS AND BANKING—LOANS—FRAUD OF OFFICER—ESTOPPEL.

The vice president of the Fidelity National Bank wrote a letter to the Chemical National Bank, signed by himself as vice president, requesting a loan upon a certain certificate of deposit, and certain bills receivable, as collateral. The Chemical Bank made the loan, crediting the Fidelity Bank with the amount, and so notified the cashier. The amount was thereupon placed to the vice president's credit by his order, and was used by him so that the bank received no benefit therefrom. The certificate of deposit was false, and the notes deposited as collateral were obtained by him for the purpose of raising money for his personal use. *Held* that, as the Chemical Bank dealt with him solely in his official capacity, the Fidelity Bank is estopped to deny that the loan was made to it, and for its benefit, and it is liable for its repayment.

2. SAME—COLLATERALS—SUBSTITUTION.

Shortly after the loan was made the vice president, as such, and ostensibly on behalf of his bank, asked the return of part of the collateral, and the substitution of certain other notes for it, and this was conceded. Among the notes so substituted were some made to the order of H. & Co., and indorsed by them. H. & Co. received no consideration for the transfer of these notes, and the Fidelity Bank had nothing to do with them. The vice president of the bank was also the managing partner of H. & Co., and in this capacity he dealt with the notes. *Held* that, as against the Chemical Bank, the firm of H. & Co. was estopped to deny that these notes were properly pledged as security for the loan to the Fidelity Bank.

3. SAME.

The estoppel upon the Fidelity Bank exists, however, in favor of the Chemical Bank, and no further; and hence H. & Co. have no remedy against the Fidelity Bank on account of any liability that may be enforced against them by the Chemical Bank on account of the notes so pledged, which were indorsed by them.

4. SAME—INSOLVENCY—PROOF OF SURETY.

Furthermore, where the Fidelity Bank has become insolvent, and the Chemical Bank has proved its whole debt against it, H. & Co., who quoad hoc occupy the position of sureties for the Fidelity Bank, are not entitled to prove any claim against the insolvent by reason of the enforcement of their liability as sureties.

In Equity. Suit by James H. Stewart, trustee of E. L. Harper & Co., against David Armstrong, receiver of the Fidelity National Bank. Bill dismissed.

Statement by SAGE, District Judge:

On the 28th of February, 1887, Edward L. Harper, then vice president of the Fidelity National Bank of Cincinnati, mailed to the Chemical National Bank of New York a letter signed by himself, as vice president of the Fidelity National Bank, asking for a loan of \$300,000, and inclosing a certificate