

of the stockholders. The opinion in the case of *Scovill v. Thayer*, 105 U. S. 143, does not conflict with this view. There, where the corporation, so far as it could do so, had released the obligations of the stockholders, the court held that they were not bound to pay anything until the necessary amount was at least approximately ascertained. The use of the word "approximately" would seem to show that the court did not mean that the obligations of stockholders were absolutely limited in the way suggested. The decision in *Hawkins v. Glenn*, supra, that for the purposes of an action at law similar to that sought to be enjoined herein the decrees against the corporation bind the stockholders, seems to me to be conclusive on this point; for, if the stockholder is bound only to pay what is needed to pay debts, if to compel him to pay more is to violate his strict rights, how can it be that the amount to be paid can be determined without his presence without allowing him to offer and object to evidence, to argue, and, if error is committed, to appeal? Let a decree be entered dismissing the bill.

CITY OF NEW ORLEANS v. GURLEY.

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

No. 12,085.

MUNICIPAL CORPORATIONS—DRAINAGE—CONSTRUCTION OF LAWS.

By Act No. 30, Acts La. 1871, p. 75, the whole matter of drainage in New Orleans was transferred from the drainage commissioners appointed under prior acts to the city itself; and section 9 thereof required the commissioners to transfer all moneys, real estate, and other property under their control to the city board of administrators. The section then provides that "all property not money, so received, shall be held in trust for the payment of said Mississippi and Mexican Gulf Canal Company, [a creditor of the drainage fund,] and ultimately for the benefit of New Orleans, should the same not be required for the work of drainage." *Held*, that the intent of the act was that so long as any property, other than money, was required for drainage purposes, it should be held and used for that purpose by the city.

In Equity. Bill by the city of New Orleans against J. W. Gurley, receiver of the drainage fund, to compel the reconveyance to the city of the drainage machine and the ground on which it is located. Decree for complainant.

E. A. O'Sullivan, City Atty., and Henry Renshaw, Asst. City Atty., for the city of New Orleans.

Richard De Gray, for J. W. Gurley, receiver.

BILLINGS, District Judge. This cause is submitted for final decree on the bill, answer, exhibits, and depositions. It grows out of the drainage system for the city of New Orleans. In the 50's the legislature of Louisiana formed a drainage system. A tax was levied once for all upon all the property affected by the drainage system, and commissioners were appointed. Subsequently these commissioners were changed, but the matters connected with the drainage remained in the hands of the drainage commissioners down

to the year 1871, when the legislature, by Act No. 30 of the Acts of 1871, p. 75, transferred the whole matter of the conduct of the drainage, its appliances, and the management of the funds connected therewith, to the city of New Orleans.

The question that is presented here comes up in this way: A receiver has been appointed for the creditors of the drainage fund. The city of New Orleans has transferred to that receiver all the property it received from the drainage commissioners. Among the things transferred to the city was the drainage machine known as the "Dublin Street Drainage Machine," with the square of ground upon which it is situated, bounded by Fourteenth, Madison, Collipythia, and formerly Adams, now Dublin, streets.

This is a suit by the city to compel from the receiver a reconveyance to itself, as trustee of the drainage matters, of this drainage machine and this square of ground. The decision of the question presented depends upon the construction of the ninth section of the act of 1871, above referred to. That section provides that the drainage commissioners shall transfer to the board of administrators of New Orleans all the moneys, assessments, and claims of drainage in their hands or under their control, all titles, real estate, all books, plans, tableaux, judgments in favor of commissioners, the office furniture of said drainage machines, etc. After making provision for the money and the assessments there follows this clause:

"And that all property not money so received shall be held in trust for the payment of said Mississippi and Mexican Gulf Canal Company, and ultimately for the benefit of New Orleans, should the same not be required for the work of drainage."

I think that the conditional clause, "should the same not be required for the work of drainage," was intended to apply alike to the payment of the creditor and to the ultimate holding for the benefit of the city; that the intent of the legislature was that, so long as any property not money thus transferred to the city from the drainage commissioners should be required for the work of drainage, it was to be held and used by the city for that purpose. To state the proposition in another way, that it was not until it should not be required for the work of drainage that it should be held in trust for the payment of the obligations of the drainage system, and ultimately for the benefit of New Orleans, independently of the drainage.

This brings me to the consideration of the testimony. The testimony shows that this machine and square upon which it is located are required for the work of drainage. The testimony is from very competent engineers and other witnesses who testify that without this machine one-third or thereabouts of the area of the city would be liable to be inundated, and possibly submerged. There can be no doubt from the evidence in the cause that the machine and square of ground are necessary for drainage purposes; in the language of the statute, are required for the work of drainage. The legislature, when it required the conveyance to the city from the drainage commissioners, having placed this property in the condition of property which, so long as the circumstances established

by the evidence continue, was to be held by the city and used for drainage purposes, it follows that the city is entitled to and ought to hold the same for that purpose.

The decree must be, therefore, that the receiver reconvey to the city of New Orleans the said drainage machine and the square of land upon which it is situated, to be held by it according to the terms of the act of 1871, § 9.

HARTFORD FIRE INS. CO. et al. v. BONNER MERCANTILE CO.

(Circuit Court of Appeals, Ninth Circuit. May 18, 1893.)

No. 72.

1. ARBITRATION AND AWARD—SUBMISSION—CONSTRUCTION—UMPIRE.

The agreement between insurer and insured to submit to arbitration the amount of damage suffered by fire provided that each party should appoint an arbitrator, by whom the loss should be "estimated and appraised in detail, together with a third person to be selected by them, who shall act as an umpire to decide between them in matters of difference only; and the said three persons, or any two of them, shall a true return and award make," etc. *Held*, that such third person was constituted an umpire, and not a third arbitrator to act with the other two in making the estimates; and this though his decision is not, under the terms of the instrument, to be binding, unless concurred in by one of them. 44 Fed. Rep. 151, affirmed.

2. SAME—PROCEDURE OF UMPIRE.

On a bill by the insurer to set aside the award it was shown that the two arbitrators examined each item of stock of goods in question, and each stated his estimate of the damage suffered by it, without discussion, or endeavor to reconcile conflicting estimates; that the umpire was present, and examined some few articles, but refused to decide any differences appealed to him at the time, stating that he would settle them when appraisement was ended; that one arbitrator fixed the damage at \$5,000, the other at over \$115,000; that the umpire then took their inventories, having made few memoranda himself, locked himself in a room with several clerks, and after three days made an award of \$60,000, which one of the arbitrators concurred in. *Held* that, in view of the fact that the submission constituted him an umpire, his mode of making his award was not such as to invalidate it, and no ground is shown for setting it aside.

3. SAME—EXCESSIVE AWARD.

The court cannot consider the objection that the award was excessive, in the absence of a showing of corruption or partiality on the part of the arbitrators, or of fraud in the opposite party.

4. SAME—UNDUE INFLUENCE.

The fact that the umpire and the arbitrator appointed by the insured partook of the hospitality of the insured while the umpire was making up his award cannot be urged, in argument on appeal, as a ground for invalidating the award, where it was not so set forth in the bill, and complainants did not amend so as to avail themselves of it after the fact was brought out in evidence.

5. SAME—PARTIES—JURISDICTIONAL AMOUNT.

All the insurers of the property damaged joined in the submission, and afterwards joined in the bill to set aside the award. As the proportional liability of some of them, under the award, was less than \$2,000, the court dismissed the bill as to them. *Held*, that this was error, for the controversy was single, the amount in controversy being the amount of the award.

Appeal from the Circuit Court of the United States for the District of Montana.