

the funds, and take all the hazards of the business and of remunerative returns, and to pay a prescribed percentage of its gross receipts in return for the license,—is the contract a reasonable one for the grantor of the license, having in mind the amount of the investment required, the equalization of the burdens of municipal taxation among the community, and the increased facilities of cheap transportation? That it may result eventually in large returns to the investors is plainly not a negation of its fairness now. If it fail to prove as remunerative as expected, can the grantee, on that ground, escape his burdens? If acted upon for 14 years, and regarded by both parties as superseding a prior contract and defining their relations, and affirmed by one party as the basis of recovery against the other, by successful litigation, there is no principle, consistent with sound morality, that will permit its reasonableness, or even its constitutionality, to be questioned now, at the suit of the grantor, who seeks, in bad faith, to impugn its own grant. *Daniels v. Tearney*, 102 U. S. 421. The bill should be dismissed, with costs.

FLAHRITY v. UNION PAC. RY. CO.

(Circuit Court of Appeals, Eighth Circuit. July 10, 1893.)

No. 243.

FEDERAL COURTS—CIRCUIT COURT OF APPEALS—ASSIGNMENT OF ERRORS—TIME OF FILING.

In pursuance of rule 11 of the circuit court of appeals for the eighth circuit, requiring an assignment of errors to be filed with the petition for the writ of error or appeal, and declaring that errors not assigned according to this rule will be disregarded, that court will not review a judgment when the assignment of errors has not been filed until after the writ of error was allowed, nor until more than six months after the judgment was rendered. *U. S. v. Goodrich*, 54 Fed. Rep. 21, followed.

In Error to the Circuit Court of the United States for the District of Colorado. Affirmed.

Statement by SANBORN, Circuit Judge:

David Flahrity, the plaintiff in error, brought an action against the Union Pacific Railway Company, the defendant in error, to recover for personal injuries alleged to have been caused by the negligence of the defendant. A trial was had, which resulted in a verdict and judgment in favor of the defendant. To reverse this judgment the plaintiff sued out this writ of error. The judgment was rendered July 21, 1892. The writ of error was issued and filed December 6, 1892. The assignment of errors was filed January 24, 1893. No assignment of errors was filed before that date.

A. B. McKinley, (Hugh Butler, on the brief,) for plaintiff in error.
Willard Teller, (H. M. Orahood, E. B. Morgan, and J. M. Thurston, on the brief,) for defendant in error.

Before SANBORN, Circuit Judge, and SHIRAS and THAYER, District Judges.

SANBORN, Circuit Judge, (after stating the facts.) The assignment of errors in this case was not filed until after the writ of

error was allowed, nor until after six months from the rendition of the judgment. Consequently, there are no errors for this court to consider, and the judgment below is affirmed, with costs, under the authority of *U. S. v. Goodrich*, 54 Fed. Rep. 21.

EARLE et al. v. SEATTLE, L. S. & E. RY. CO. et al.

(Circuit Court, D. Washington, N. D. June 26, 1893.)

1. RAILROAD COMPANIES—ULTRA VIRES—ALIENATION OF FRANCHISE.

A railroad company organized under the laws of Washington has no authority to transfer its franchises, except by sale and conveyance or lease made in accordance with the statutes relating to the transfer of titles to such property; and where, by a so-called "traffic agreement," the trustees, without the consent of the minority stockholders, in effect, transfer to another railroad company the entire control and management of the property, for practically the legal lifetime of the corporation, such contract is illegal and void.

2. SAME—RIGHTS OF MINORITY STOCKHOLDERS.

A controlling interest in the stock of a railway company was purchased by another railway company, which thereby secured the election of a board of trustees, consisting of its own officers and employees, who owned no stock in their own right. This board then executed an illegal traffic agreement, whereby the entire control of the franchises and property of the former company was surrendered to the latter. *Held*, that the minority stockholders in the former company could maintain a bill to annul the contract without first applying to the board of trustees for protection.

3. SAME—PLEADING—EQUITY RULE 94—REMOVED CAUSES.

A bill brought in a state court by minority stockholders to obtain relief from an illegal contract made by the trustees will not be *held* insufficient, after removal to a federal court, because it does not allege that complainants sought in vain for relief through the trustees and officers, as required by equity rule 94, for this rule applies only to suits originally brought in the federal courts.

In Equity. Bill by Thomas Earle and Angus Mackintosh, stockholders of the Seattle, Lake Shore & Eastern Railway Company, against said corporation, its trustees, and the Northern Pacific Railroad Company, to enjoin the further operation of the first-named corporation's railways by the latter under a traffic contract; for the appointment of a receiver, and an accounting as to the dealings of said corporations with each other. Application for appointment of a receiver granted.

Stratton, Lewis & Gilman, for complainants.

Ashton & Chapman and A. F. Burleigh, for defendants.

HANFORD, District Judge. I have studied the showing made by the complainants, and the response of the defendants thereto, contained in the pleadings and affidavits, and the arguments of counsel, upon the application for the appointment of a receiver of the Seattle, Lake Shore & Eastern Company's railway lines and business during the pendency of this suit. The case is substantially as follows: Said company was incorporated in the year 1885, under the laws of Washington Territory, with 50,000 shares of