

ferred by the court compelling the execution of a power of sale, and not by force of the decree. *Mercantile Trust Co. v. Kanawha & O. Ry. Co.*, 39 Fed. Rep. 337; *Farmers' Loan & Trust Co. v. Postal Tel. Co.*, 55 Conn. 334, 11 Atl. Rep. 184. The case last cited is exactly in point. The Postal Telegraph Company, a New York corporation, mortgaged all its property, which was situated in several states, including Connecticut and New York, to the plaintiffs, in trust, to secure the payment of its bonds. Upon a failure to pay the interest, the plaintiffs brought a suit for a foreclosure in the supreme court in the city of New York. Judgment was rendered for the plaintiffs, pursuant to which a referee was appointed, who sold all the property, including the real estate in Connecticut, and executed a conveyance of the same to the purchaser. Suit was brought to foreclose the mortgage on the Connecticut property, according to the laws and practice in that state. The defendant the Benedict & Burnham Manufacturing Company, an attaching creditor, appeared, and set up a special defense, alleging the foreclosure and proceedings in the state of New York. The defense was held insufficient, on the ground that the decree and proceedings had thereunder were nugatory as to the real estate situate in Connecticut. In my judgment, the doctrine of this case presents the better view, and it must be held that the decree of the Ohio court did not merge the lien of the mortgage on the real estate in Indiana.

It results from these views that the plea is insufficient, and it is so ordered, with leave to the defendant to answer within 30 days.

#### HUTCHINSON v. SUTTON MANUF'G CO.

(Circuit Court, D. Indiana. October 21, 1893.)

No. 8,691.

##### 1. CORPORATIONS—POWERS—ACCOMMODATION PAPER.

A business corporation has no power to accept accommodation paper, and the officers who cause it to make such acceptance are personally responsible to it for payments made or liabilities incurred in consequence thereof.

##### 2. SAME—ASSIGNMENTS—PREFERENTIAL MORTGAGES.

Where the controlling directors of two corporations are the same persons, a preferential mortgage given by one to the other as security for payments and liabilities resulting from an acceptance of drafts by the latter for accommodation of the former is invalid, because it operates to protect the officers of the accepting company against personal liability for their maladministration in accepting paper for accommodation.

In Equity. Suit by William B. Hutchinson, assignee of the Hopper Lumber & Manufacturing Company, against the Sutton Manufacturing Company, to set aside a mortgage. On exceptions to the master's report. Exceptions overruled, and decree for complainant.

Duncan & Smith, for complainant.

J. E. McCullough and Weir & Higgins, for defendant.

BAKER, District Judge. The bill of complaint seeks the setting aside of a preferential mortgage executed by the Hopper Lumber & Manufacturing Company to the Sutton Manufacturing Company to secure the latter from loss by reason of payments made and of liabilities incurred on account of accommodation paper drawn by the former and accepted by the latter. The business affairs of each company were managed by a board of three directors. The directors of the Sutton Company were James S. Hopper, Henry S. Hopper, and Benjamin F. Sutton; and the directors of the Hopper Company were James S. Hopper, Henry S. Hopper, and Fannie A. Hopper; and James S. Hopper was the president of both companies, and Henry S. Hopper was secretary, treasurer, and general manager of the Sutton Company, and also secretary of the Hopper Company, of which James S. Hopper was manager. The bill challenges the validity of the mortgage on the ground that it is an attempt by the officers and directors of the Hopper Company to prefer themselves, and to protect their interests as stockholders of the Sutton Company, and to save themselves from loss and harm by reason of maladministration of their trust as officers and directors of the Sutton Company in having accepted drafts of the Hopper Company for its accommodation. The answer admits that the indebtedness secured by the mortgage was given to secure payments made and liabilities incurred by the Sutton Company on account of accommodation bills accepted by it drawn by the Hopper Company. The majority of the directors of each company were the same persons, and they had no authority to draw or accept the accommodation bills in question. It is firmly settled that the directors of a manufacturing corporation have no authority to divert the corporate property by issuing accommodation paper, or otherwise loaning its money or credit without consideration. The directors participating in such acts (and James S. and Henry S. Hopper certainly did) became personally liable for breach of duty to the Sutton Company to the extent of the payments made or liabilities incurred by that company on account of such accommodation paper. Whether the pecuniary interest of James S. and Henry S. Hopper as stockholders of the Sutton Company would avoid the preferential mortgage in question, it is not necessary now to determine. The mortgage inures directly to the pecuniary benefit of James S. and Henry S. Hopper, because, if valid, it would relieve them wholly or pro tanto from their liability to the Sutton Company on account of the accommodation paper. Judge Woods, when making the order continuing a temporary injunction in this suit, well said: "This case not only comes clearly within, but strongly illustrates, the soundness of the rule declared in *Lippincott v. Carriage Co.*, 25 Fed. Rep. 577, and *Howe v. Tool Co.*, 44 Fed. Rep. 231." On the authority of these cases the exceptions to the master's report must be overruled, and it is so ordered, and a decree will be entered setting aside the mortgage.

**INDIANAPOLIS WATER CO. v. AMERICAN STRAWBOARD CO.**

(Circuit Court, D. Indiana. October 20, 1893.)

No. 8,719.

**1. NUISANCE—EQUITABLE RELIEF—POLLUTION OF STREAM.**

A corporation organized for the purpose of supplying a city with water can only gain a standing in a court of equity, to enjoin a pollution of the stream whence it obtains its supply, by reason of special pecuniary damage caused to it; but when it is thus in court the relief will be granted, not only on that ground, but also on the ground of benefit to the public, which uses the water.

**2. SAME—DEFENSES.**

It is no defense, to a suit for creating a nuisance by befouling a stream, that others are also engaged in committing similar acts.

**3. SAME—ESTOPPEL.**

Mere silence during the erection of a factory on a stream creates no estoppel against a riparian proprietor in respect to the enforcement of his right to have the water flow in its natural purity.

**4. SAME—PUBLIC POLICY.**

As against the right of a riparian proprietor to have water flow in its natural purity, there is no public policy in favor of industrial development which will justify the erection and operation of a factory that pollutes the stream, provided that the most modern appliances are used to prevent it.

**5. SAME—EQUITY JURISDICTION—INJUNCTION.**

Injunction is the only adequate remedy for the continued pollution of a stream by the operation of a factory, to the injury of a riparian proprietor, when the extent of the injury is contingent and of doubtful pecuniary estimation. 53 Fed. Rep. 970, reaffirmed.

In Equity. Suit by the Indianapolis Water Company against the American Strawboard Company to enjoin the pollution of a stream. A demurrer to the original and supplemental bills was heretofore overruled. 53 Fed. Rep. 970. Injunction granted.

A. C. Harris and Baker & Daniels, for complainant.

Jump, Lamb & Davis, George Shirts, and Kern & Bailey, for defendant.

**BAKER, District Judge.** The bill seeks injunctive relief to prevent the alleged pollution of the water of White river by the defendant to the damage of the complainant. It charges that the complainant is the owner of a system of waterworks constructed under statutory power for the purpose of supplying water for domestic uses and for the extinguishment of fires to the inhabitants of the city of Indianapolis, and that it is the owner of a canal by a title derived by mesne conveyances from the state. It avers that its water supply is obtained by the inflow of water into a gallery of more than 1,000 feet in length, and of considerable width, formed by an excavation made into the water-bearing gravel underlying the city, which gallery is dug alongside of, and several feet below, the bed of the river, and at a distance from it of a few feet at some points, and at a distance of more than 100 feet at other points. The inflow of water into the gallery is alleged to come from the water-bearing gravel on the one side, and