

that the interests of the corporation would be subserved indirectly. A consent to such a lending of credit as he claims would, as we have already seen, be in excess of the corporate powers, and ineffectual to charge the corporation in favor of one affected by notice. On the other hand, an inquiry would have disclosed that the resolution was accepted and signed as a matter of form, not to authorize the pledging of the bonds in aid of the credit of J. H. Pank & Co., or of Herman and Pank as individuals, as claimed by Pank, but as a form of authority which would better enable Herman and Pank to negotiate the bonds, or pledge them for corporate purposes only. Of course, if this "form" had been so worded as to mislead an innocent purchaser into the belief that Herman and Pank were the absolute owners of the bonds, the corporation might well have been estopped, and compelled to bear the loss, rather than have it thrown upon one misled by a negligent trust in their fidelity. But we are satisfied—First, that the form in which this authority was conferred did not in fact deceive or mislead Boynton; and, second, that it was gross negligence to assume that Herman, when acting for himself, was speaking for the corporation, when he declared, as president, that he, as an individual, had complied with the terms and conditions of his bid. The "form" in which the corporation delegated authority to Herman did not warrant any inference that he was authorized to bind the corporation by his self-serving declarations. The decree must be reversed, and the bill dismissed.

PULLMAN'S PALACE-CAR CO. v. CENTRAL TRANSP. CO.

CENTRAL TRANSP. CO. v. PULLMAN'S PALACE-CAR CO.

(Circuit Court, E. D. Pennsylvania. January 28, 1896.)

No. 44.

ALLOWANCE OF APPEALS FROM CIRCUIT TO SUPREME COURT—POWER OF CIRCUIT COURT.

The right of appeal from the circuit courts direct to the supreme court, in the classes of cases enumerated in section 5 of the judiciary act of March 3, 1891, is an absolute right, and the circuit courts have no authority either to allow or disallow such an appeal, or to determine whether any particular case is one in which the appeal lies. This question is for the supreme court alone.

This was a bill by the Pullman's Palace-Car Company against the Central Transportation Company to enjoin it from prosecuting an action at law to recover rent under an alleged lease. Defendant was allowed to file a cross bill to obtain restitution of certain property obtained by complainant pursuant to the provisions of the lease, or for an accounting for its value, etc. A decree was rendered upon the cross bill against the Pullman's Company, and that company has now applied for the allowance of an appeal to the supreme court.

A. H. Wintersteen, J. S. Runnells, Robt. T. Lincoln, and Edw. S. Isham, for Pullman's Palace-Car Co.

John G. Johnson and Frank P. Prichard, for Central Transp. Co.
Before DALLAS, Circuit Judge, and BUTLER, District Judge.

DALLAS, Circuit Judge. The Pullman's Palace-Car Company has presented a petition for the allowance by this court of an appeal direct to the supreme court. The counsel of the petitioner insist that it is entitled to take such appeal under section 5 of the act to establish circuit courts of appeals, etc., approved March 3, 1891, because, as is claimed on its behalf, the case is one "that involves the construction or application of the constitution of the United States." The counsel of the transportation company denies that any such question is involved, but admits that the alleged right of appeal, if such question existed, would be absolute, and not dependent upon the assent of this court. This view of the law is, in our opinion, correct. The act gives a right of appeal direct to the supreme court in certain enumerated cases. It does not confer upon the circuit court authority to allow or to disallow such appeals, or to adjudge whether any particular case is one in which such appeal lies. We are aware that the practice has to some extent prevailed of obtaining the allocatur of the circuit court before taking the appeal, but there is nothing in the statute which requires it; and where, as here, the application is resisted, we think it should not be given. In our opinion, the appeal, if warranted by the statute, is of right; and whether or not it is in fact so warranted is not for this court, but for the supreme court, to determine. Upon this ground alone, a special allocatur is denied.

YOUNG v. ALHAMBRA MIN. CO.

(Circuit Court, N. D. Illinois. December 16, 1895.)

CORPORATIONS—SUIT BY STOCKHOLDER—EQUITY PLEADING—RULE 94.

A bill by a stockholder against a corporation and its directors, alleging that a majority of the directors, in conspiracy with others, are attempting, through execution sale on an unauthorized judgment note, fraudulently to obtain title to the property of the corporation, and that the complainant learned of these transactions only a few days before the time for redemption expired, need not allege that complainant has demanded that the directors bring suit to set aside such sale, since such demand would be useless.

In Equity.

P. A. Hurd and W. P. Black, for complainant.

Lyman & Jackson and George P. Merrick, for defendant.

GROSSCUP, District Judge. The bill is by Young, a citizen of Indiana, against the Alhambra Mining Company, a corporation under the laws of Illinois, and Morse, Burchard, Flersheim, Thorne, and Cadwell, officers and directors of such corporation, each a citizen of Illinois, and Montgomery Ward and James B. Wilbor, citizens of Illinois. The bill shows that, at the time of the transaction com-