TOWLE v. AMERICAN BUILDING, LOAN & INVESTMENT CO.[1]

(Circuit Court, N. D. Illinois. January 4, 1897.)

BUILDING AND LOAN ASSOCIATIONS—POWER TO ACCEPT DRAFTS—NEGOTIABLE INSTRUMENTS.

A building and loan association is not liable upon a draft fraudulently accepted by its vice president, even at the suit of an innocent holder, since such associations have no power to accept drafts.

In Equity. Suit by Marcus M. Towle against the American Building, Loan & Investment Company. A receiver having been appointed, the firm of Grommes & Ullrich filed a petition praying that the receiver be directed to pay them the amount of a certain accepted draft.

Winston & Meagher, for petitioners.
Collins & Fletcher, for receiver.

GROSSCUP, District Judge. The hearing under consideration is on the petition of Grommes & Ulrich, co-partners, the answer of the receiver thereto, and the stipulation entered into between the petitioners and the receiver respecting the facts covering the case. From these pleadings and the stipulation it appears that on the 4th of October, 1893, the American Building, Loan & Investment Company, through its vice president, purported to accept a draft, at 60 days, for the sum of $1,608.47, drawn upon it by one George Montgomery, in favor of the petitioners. Like drafts had been previously drawn by the same Montgomery, and accepted by the vice president of the society, in the name of the society. Upon inquiry by the petitioners, the vice president informed them that Montgomery was a creditor of the society, and the draft presumably accepted in the payment of such credit. As a matter of fact, no indebtedness existed to Montgomery. The arrangement was, unquestionably, a device between the vice president of the society and Montgomery, under which Montgomery, on the credit of the society, would obtain credit from the petitioners and others.

So far as the facts disclosed by the pleadings and stipulation go, both the society and the petitioners are involuntary victims to this fraud, and one or the other must bear its pecuniary loss. Corporations act through their officers, and will not be heard to deny such officers' authority in a given instance where such instance is within the general field of their authority. In other words, the public dealing with a corporation, through its officers, is not required to know such officers' authority for the special transaction in hand; it is enough to know that such transaction is presumably under the general authority conferred. The corporation extending the authority, not the public dealing upon the face of it, must suffer the loss if there is any abuse of it by the officer in the particular transaction in hand. This rule is founded upon the essential conveniences of commercial and corporate life, and is only holding that party liable

[1] Reported by Louis Boisot, Jr., Esq., of the Chicago bar.

for losses growing out of abuses of power who has it easiest in hand to prevent such abuses, either by the employment of none but honest agents, or the creation of a system of counterchecks or inspection that will speedily disclose any disposition to abuse their trusts. But corporations are not bound by the abuse of its officers when such act of abuse is wholly and clearly outside the field of the corporation's power. Neither the president nor the directory of a corporation can do such acts as the corporation itself has no power to do. The law of estoppel does not enlarge corporate power, and, in consequence, corporate liability. Where the powers of the corporation stop, the powers of its officers also stop, and that point of limitation the public are bound at their peril to know.

The acceptance of the draft under consideration is nothing more nor less than a promise to pay, at a future date, the sum named. Has the society the power, under the law, to execute promissory notes? It is not a commercial nor a banking institution, with the general powers incident to such concerns. It cannot borrow money, nor loan money, except such as is paid in by its members in the manner pointed out by the law, nor engage in any general business transactions. Its sole function is to consolidate the small savings of the many, and, by a system of unified loans, secure advantages to each contributor that he could not, perhaps, individually obtain. To this process of consolidation, and of loaning out the gatherings thereof, and their collection again with the interest thereon for redistribution, with such incidental powers as are necessary to make the process effective, the authority of the corporation is strictly confined. The usefulness of such corporations and their safety depend upon such strict limitation. To grant them, by judicial implication or intendment, a wider amplitude of power, would destroy the only safe assurance on which they are granted. What phase of this process demands or justifies the execution of promissory notes, or other evidences of indebtedness? Money actually obtained by such corporation can, of course, be recovered back on the equitable doctrine of money had and received. But, in view of the purposes for which this corporation was organized, what phase of its duties demands that it should have the right to execute promises to pay in the future? Of course, if a loose rein is to be given to their management, occasions may be easily pointed out when the creation of indebtedness by the execution of promissory notes might become advantageous. But the loose rein is the very thing the legislature intended to prohibit, and a tight rein is the only safe conduct the courts can adopt. This, the public dealing with them, or their officers, must either know or find out. My opinion is that the society itself had no power, in law, to execute the acceptance under consideration, and that, therefore, the act of the vice president is ultra vires. The decree will be against the petitioners.

GRAND TRUNK RY. v. CENTRAL VERMONT R. CO.

(Circuit Court, D. Vermont. February 10, 1897.)

LEASE OF RAILROADS—PROVISION FOR PAYMENT OF NET EARNINGS TO BONDHOLDERS—RECEIVERSHIP.

Where the lease of a railroad provided for the payment of the net earnings to mortgage bondholders, who were creditors of the lessor, that agreement between the lessor and lessee, having been assented to by the bondholders, operated as an irrevocable assignment to them of the net earnings. And, while the lessee was obligated to pay out of the gross earnings certain prior claims before paying anything to bondholders, yet, the holders of those claims having let payment be made to the bondholders first, they became common, unsecured creditors of the lessee, and, a receiver having been appointed, they are not entitled, as against the bondholders, to have their claims paid out of earnings accruing after the appointment of the receiver; there being nothing to show that the gross earnings prior to the receiver's appointment—out of which no net earnings have ever been paid to bondholders, and which are still in the hands of the lessee—are not sufficient to pay their claims.

Wager Swayne and William B. Hornblower, for Charles Parsons, petitioner.

Alric R. Herriman, for three banks, petitioners.

Louis Hasbrouck, for Ogdensburgh & L. C. R. Co.

Thomas Spratt and Frank Loomis, for New York Central R. Co., second bondholders.

Benj. F. Fifield, for Central Vermont R. Co.

Charles M. Wilds, for Grand Trunk Ry. Co.

WHEELER, District Judge. When the receivers in this case were appointed, March, 20, 1896, the Ogdensburgh Railroad, as a leased line assigned to the defendant, passed into the hands of the receivers. Afterwards, on petition of Charles Parsons, holder of mortgage bonds of that road dated April 1, 1880, the net earnings were directed to be set apart to be disposed of according to the rights of those interested therein. Since then about $11,000 of earnings before the receivership, collected by the receivers after, and about $125,000 net earnings since the receivership, have been so set apart. Now those interested in those funds have been heard as to the disposal of the same. The lease or agreement of the Ogdensburgh road provided, among other things (article 2):

"All of the gross receipts, including rents of its lands and buildings, of or from the business and traffic of or upon the said railroad and other property of said party of the first part during the continuance of this agreement, embracing all such gross receipts heretofore earned by and due the said party of the first part, but not yet received by it, shall be received and collected by said party of the second part, and shall be disposed of by it, as hereinafter stated."

By article 3, the lessee was to keep the road and rolling stock and property in good order and condition, pay taxes, expenses of meetings of directors and stockholders; "to assume, conduct, and pay the expenses of any and all litigations now pending, wherein the said party of the first part is a party or interested, and to pay any and all judgments that may have been, or may ultimately be, recovered against said party of the first part therein"; to assume all obligations of the party of the first part that might thereafter be incurred, either by statute or common law, as common carriers, warehousemen, or