

costs in this court, inasmuch as complainant has, upon appeal, increased the amount of his decree against the defendant Clark, complainant is entitled to costs of this appeal. Inasmuch as complainant has, by his appeal, failed to disturb the decree of the circuit court in favor of the Carrabelle Railroad Company, that company is entitled to costs of this appeal against complainant.

DE NEUFVILLE v. NEW YORK & N. RY. CO. et al.

(Circuit Court, S. D. New York. January 10, 1898.)

EQUITY PRACTICE—INJUNCTION PENDENTE LITE.

An injunction pendente lite, restraining the issue of bonds under a mortgage by a railroad company having no title to part of the property described, will not be granted when complainant can obtain full and complete relief on final hearing, and in the interim can suffer no damage, through the issue of such bonds.

This was a suit in equity by Charles De Neufville against the New York & Northern Railway Company, the New York Central & Hudson Railroad Company, and others. The cause was heard on a motion for preliminary injunction.

Simon Sterne, for the motion.

Charles F. Brown, opposed.

LACOMBE, Circuit Judge. The decision of the court of appeals in *Farmers' Loan & Trust Co. v. New York & N. R. Co.*, 150 N. Y. 410, 44 N. E. 1043, reversed the judgment of foreclosure under which the New York & Putnam Railroad Company claimed to own and hold the property of the New York & Northern Railroad Company, of which complainant was a stockholder. The lease, therefore, of the New York & Putnam Railroad Company to the New York Central & Hudson River Railroad Company was ineffectual to convey any right or title to such property, and the inclusion of such property in the new mortgage was wholly unwarranted. But this decision of the court of appeals was rendered in October, 1896, and the mortgage was not executed until June 1, 1897. The trustee under the mortgage is charged with knowledge—and so, indeed, is every bondholder—that the enumeration of such property in the mortgage given by the New York Central & Hudson River Railroad Company created no lien thereon in favor of the mortgagees.

The question now presented is whether complainant shall have an injunction pendente lite restraining the sale and issue of any more bonds under the new mortgage (bonds have already been issued to the amount of over \$4,000,000), and requiring so much of the mortgage as covers the property in question to be canceled and discharged of record. It might be a sufficient answer to this application to suggest that the trustee under the new mortgage has not yet been made a party. But assuming that, by a supplemental pleading setting up the making of the mortgage, such trustee were brought in, there is no reason for granting the relief prayed for in

advance of the hearing. If it be decided at final hearing that the mortgage must be canceled and discharged of record so far as it covers the property in question, relief thus granted will fully protect all complainant's rights as against the mortgage. Thereafter the mortgage can certainly constitute no cloud upon the title of complainant's company to the property. There will no longer be even any pretense of a lien thereunder. Complainant, therefore, will not find his measure of relief at all impaired by having to wait for it until final hearing. Nor will complainant be injured irreparably, or, indeed, in any degree, by the circumstance that more bonds may be issued in the interim. This court knows of no authorities supporting the proposition suggested, that the bona fide purchaser of a railroad bond issued under a mortgage which professed to cover property to which the railroad company had no title (the fact of want of title being perfectly apparent to any one who took the trouble to look before mortgage was executed or bonds sold) obtains thereby some equity against the owner of the property. Whether there be issued \$4,000,000 or \$40,000,000 of these bonds can make no difference to complainant, nor in any way interfere with his obtaining full relief at final hearing. Motion denied.

HAMOR v. TAYLOR-RICE ENGINEERING CO.

(Circuit Court, D. Delaware. December 23, 1897.)

No. 187.

1. CORPORATIONS—CAPITAL STOCK—TRUST FUND.

The capital stock of a corporation is a trust fund for the payment of the corporate indebtedness, before any distribution among the stockholders.

2. SAME—CAPITAL STOCK DEFINED.

The capital stock of a corporation, in its merely nominal sense, is the sum specified in its charter or certificate of incorporation, and thereby usually divided into aliquot shares; and such sum is intended to represent in amount the corporate fund which is to serve as the basis for the business or enterprise for which the corporation was created.

3. SAME.

In its substantial sense, the capital stock of a corporation is the fund of money or other property, actually or potentially in its possession, directly or indirectly derived or to be derived from the sale by it of shares of its stock or their exchange by it for property other than money. This fund includes not only money or other property received by the corporation for shares of stock but all balances of purchase money, or instalments, due the corporation for shares of stock sold by it, and all unpaid subscriptions for shares.

4. SAME—DISPOSITION OF CAPITAL STOCK.

In the absence of statutory authority in that behalf a corporation, whether solvent or insolvent, has no legal power to reduce the fund represented by its capital stock by any formal or voluntary act on its part, to the prejudice of its creditors either then or thereafter existing, by distributing any part of it among the stockholders by way of dividend, or by giving any part of it to one or more stockholders, or by disposing of any part of it in any other manner, except by way of changing its form to meet the exigencies of the corporate business.