

REED v. ATLANTIC & P. R. CO.¹

(Circuit Court, S. D. New York. August 27, 1884.)

CIRCUIT COURTS—EFFECT OF DECISIONS IN OTHER CIRCUITS.

A decision in another circuit, in an action between two railroad companies, that the right of action for unpaid dividends due under a lease was in the lessor company, will be followed in an action by stockholders of that company against the lessee for an accounting of such dividends.

This was a suit by William Reed against the Atlantic & Pacific Railroad Company to recover dividends alleged to be due from the latter company to the plaintiff as a stockholder in the Pacific Railroad Company, under the terms of a lease made by the Pacific Company to the defendant.

Edward L. Andrews, for plaintiff.

John E. Burrill, for defendant.

WALLACE, Circuit Judge. I should incline to the opinion, were it not for the decision of the circuit court for the district of Massachusetts, that the plaintiff, as one of the stockholders of the Pacific Railroad, could maintain this action; and that its directors were not his agents, or the agents of the stockholders generally or of the corporation, in accepting a surrender of the lease made by the corporation to the defendant. It would seem that, by the lease of all its property to the defendant for 999 years, with a power to mortgage, the Pacific Railroad practically abdicated all its functions, dissolved its relations with its stockholders, and constituted its stockholders creditors of the defendant. By the terms of the lease, it was to maintain its corporate organization in the interests of the defendant, and was also to retain sufficient vitality to re-enter and take possession of the demised property, in case the interest to its bondholders, or dividends to its stockholders, were not paid by the defendant according to the covenants. For all practical purposes, the corporation was as defunct as anything short of a judgment of dissolution could make it, and this was the result contemplated by all the parties to the lease. If its directors had accepted a surrender under circumstances which, in any conceivable way, could have inured to the interests of its stockholders or creditors, their action might be deemed as equivalent to exercising the power of re-entry. But in the suit brought in the name of the corporation against the defendant to recover, among other things, the dividends due stockholders under the lease, it was decided, by a court of co-ordinate jurisdiction with this, that the cause of action was in the corporation, and not in the individual stockholders. *Pacific R. R. v. Atlantic & P. R. Co.*, 20 Fed. 277. That decision is entitled to great respect. Upon the case in the form in which it was there presented, the conclusion reached by the court

¹ This case has been heretofore reported in 22 Blatchf. 469, and is now published in this series, so as to include therein all circuit and district court cases elsewhere reported which have been inadvertently omitted from the Federal Reporter or the Federal Cases.

seems reasonable and sound. It is certainly desirable that the rights of all the stockholders, and the liability of the defendant to them, be settled in one controversy, and it may well be considered that the corporation retains sufficient life to represent its stockholders in such a suit. In any view, it would be unseemly for this court, in a suit upon the same lease, brought by one of the stockholders, to recover part of the same dividends, to hold the contrary. Such a decision might result in two judgments against the defendants, in different jurisdictions, for the dividends. "Under such circumstances," as was well said by Emmons, J., in *Vulcanite Co. v. Willis*, 1 Ban. & A. 573, Fed. Cas. No. 5,603, "every suggestion of propriety and fit public action demands" that the decision of the co-ordinate tribunal "be followed until modified by the appellate court." Judgment is ordered for the defendant.

MILLER v. PERRIS IRRIGATION DIST. et al.

(Circuit Court, S. D. California. February 21, 1898.)

No. 752.

1. **DE FACTO PUBLIC CORPORATION—COLLATERAL ATTACK ON ORGANIZATION.**
Where a reputed public corporation is acting under the forms of law, unchallenged by the state, the validity of its organization cannot be brought in question by private parties. Neither the nature nor the extent of an illegality in its organization can affect its existence, if it be acting under color of law, and the state makes no complaint.
2. **ORGANIZATION OF IRRIGATION DISTRICT—DECREE OF CONFIRMATION—RES JUDICATA.**
Where proceedings are had in the proper court, as provided by Act Cal. March 16, 1889, giving the superior court of the county in which the lands of an irrigation district are situated power to determine the legality and validity of each and all the proceedings for the organization of such district, the decree rendered thereon, declaring said district to have been duly and legally organized, is conclusive against any attack for fraud or illegality in any of the proceedings for such organization.
3. **SUIT AGAINST IRRIGATION DISTRICT—VALIDITY OF ORGANIZATION—LIMITATION.**
A suit in equity, so far as it seeks relief on the ground of fraud or illegality in proceedings for the organization of an irrigation district, is barred if brought two years after the order is made by the board of county supervisors declaring the district duly organized, under Act Cal. March 7, 1887, § 3, as amended by Act March 20, 1891.
4. **INJUNCTION—IRRIGATION DISTRICT—TAX DEED—ACCRUAL OF CAUSE OF ACTION.**
The right to enjoin the directors of an irrigation district from taking a deed to complainant's land bought in under tax sale, and from making future assessments, accrues with the threatened making of the deed and levy of assessment, and not with the issuance and sale of the bonds, for the payment of which such sale was made and such assessments are threatened.

Works & Lee, for complainant.

L. L. Boone and O. A. Trippet, for *Ætna Iron & Steel Co.*

C. C. Wright, for *Erskine, Lacy, and others.*

WELLBORN, District Judge. This is a suit for a decree declaring illegal and void the proceedings for the organization of the Perris irrigation district, canceling the bonds issued by said district, and enjoin-