

the opinion of the courts of one jurisdiction, and finding that opinion unfavorable to him, resort to a new jurisdiction for a retrial of the identical case already tried and determined. The spectacle that would be presented by two decisions of identical questions involved in the same will, one for and the other against, one sustaining the will in the exercise of a power to control the disposition of personal property, and the other overthrowing it in the exercise of its jurisdiction to control the disposition of real estate, would be an unseemly one. Such a result would tend to bring the administration of justice into deserved contempt. In a case like this, if there is question as to the binding effect of the adjudication already had, the court ought at least to regard that adjudication as a precedent to be followed. I am of the opinion that the state court of probate has, under the statute of this state, jurisdiction to construe this will for all purposes, and that the decree of that court in the construction of this will is a bar to this action. The demurrer is overruled.

ST. LOUIS UNITED ELEVATOR CO. v. NICHOLS et al.

(Circuit Court of Appeals, Seventh Circuit. February 7, 1899.)

No. 530.

JOINT DECREE—APPEAL BY SINGLE DEFENDANT.

A deficiency decree against two defendants, the mortgagor and its grantee, who by the deed had assumed payment of the mortgage debt, is not only joint in form, but in effect, since it determines matters which might be the subject of controversy between the defendants, and the grantee cannot maintain an appeal therefrom without making its co-defendant a party to such appeal.

Appeal from the Circuit Court of the United States for the Southern District of Illinois.

Joseph S. Laurie, for the motion.

Samuel P. Wheeler, opposed.

Before WOODS and JENKINS, Circuit Judges, and BUNN, District Judge.

WOODS, Circuit Judge. This is an appeal by the St. Louis United Elevator Company from a decree of which the following is the essential part:

"It appearing to the court that the deficiency between the net proceeds of the foreclosure sale and the amount of the mortgage debt is the sum of \$31,724.79, and that the St. Louis United Elevator Company, by reason of its assumption of the payment of the mortgage debt in the deed from the Advance Elevator & Warehouse Company of date December 6th, 1889, conveying said property to the St. Louis United Elevator Company, subject to said mortgage, is equally liable for the payment of said deficiency, it is ordered, adjudged, and decreed that the above-named C. H. Albers, sole owner of all the mortgage bonds, recover of defendants, the Advance Elevator & Warehouse Company and the St. Louis United Elevator Company, said sum of \$31,724.79, together with costs, and have execution therefor."

The appellees have moved to dismiss the appeal because the decree is a joint one against the two corporations named, one of which has

appealed without taking steps by summons or otherwise for a severance. The rule of practice is familiar, and has been applied in many cases, of which the following have been cited: *Simpson v. Greeley*, 20 Wall. 152; *Hardee v. Wilson*, 146 U. S. 179, 13 Sup. Ct. 39; *Davis v. Trust Co.*, 152 U. S. 590, 14 Sup. Ct. 693; *Beardsley v. Railway Co.*, 158 U. S. 123, 15 Sup. Ct. 786. The contention of the appellant is that the decree appealed from is severable, both in form and substance, the interest represented by each defendant separate and distinct from that of the other, and the appeal therefore well taken. The following cases are cited: *Gilfillan v. McKee*, 159 U. S. 303, 16 Sup. Ct. 6; *Germain v. Mason*, 12 Wall. 259; *Forgay v. Conrad*, 6 How. 203; *Todd v. Daniel*, 16 Pet. 523; *Hanrick v. Patrick*, 119 U. S. 156, 7 Sup. Ct. 147; *Bank v. Hunter*, 129 U. S. 557, 9 Sup. Ct. 346.

This decree, like that in *Hanrick v. Patrick*, is certainly joint in form, but it is not, as that was, "severable in fact and in law." It adjudges matters between the two corporations which, if it were reversed on this appeal, would be set at large, and might become the subject of litigation between them. It determines, as between them, all the facts recited,—the execution and validity of the mortgage, the amount of the deficiency, the conveyance of the mortgaged property by one company to the other, the assumption of the mortgage debt by the grantee, and, by necessary implication, the validity of the deed and of the contract of assumption. The appeal is therefore dismissed.

SANITARY DIST. OF CHICAGO v. RICKER et al.

(Circuit Court of Appeals, Seventh Circuit. February 7, 1899.)

No. 511.

1. MUNICIPAL CORPORATIONS—CONTRACTS—RIGHT OF CONTRACTOR TO RESCIND.

The trustees of the sanitary district of Chicago, as representatives of a municipal corporation required by law to let contracts for public work to the lowest bidder after advertisement, are not bound to exercise diligence to obtain information concerning the nature or cost of the work for the benefit of the bidders, with whom they deal at arm's length, their sole duty in that regard being to the corporation; and a contractor for the excavation of a section of the drainage canal is not entitled to a rescission of his contract because he encountered a substance more difficult and expensive to excavate than anything he was led to expect from an examination of the profile and data in the office of the chief engineer,—no intentional fraud being charged against the trustees or engineer,—nor because some of the trustees knew, or should have known, of the existence of further information on the subject of which they did not inform the contractor.

2. SAME—REPRESENTATIONS OF OFFICER.

The chief engineer of the sanitary district of Chicago is not authorized by virtue of his office to bind the trustees, whose duty it is under the law to let contracts for work on the drainage canal, nor the district, by representations made to an intending bidder as to the nature of the materials to be excavated in a given section of the work; much less by expressions of opinion thereon.

3. SAME—KNOWLEDGE OF INDIVIDUAL TRUSTEES.

The sanitary district of Chicago is represented by its board of trustees as a body, and cannot be held responsible because certain individual