

LACOMBE, Circuit Judge. Whatever defect of parties there may have been originally has been corrected by the appearance of the new railroad company. The original contract under which these bonds were pledged provides:

"If there is a default in the payment of any or all of the said lease warrants, the aforesaid rolling stock and equipment will be first sold to make good the said default, and the bonds hereby assigned and transferred shall be held as secondary security to make good any deficiency that may result after the said equipment has been realized upon."

By the action or with the assent of the pledgee or of those representing it the "said rolling stock" was not sold to make good the default, and the said property was put in such a position that any such sale was made impossible, and that no one could tell whether there was any "deficiency [resulting] after said equipment has been realized upon." The original pledgee and all claiming under its original contract are estopped from claiming that the contingency provided for has arisen or can ever arise, or that the 70 bonds may be availed of as secondary or as any other security, to make good a possible deficiency which defendants have made impossible of ascertainment. Decree for complainant, with costs.

PUTNAM et al. v. TURNEY & JONES CO.

(Circuit Court, S. D. Ohio, W. D. April 18, 1899.)

SALE OF BUSINESS—RIGHT TO BOOKS OF SELLER.

A bill of sale made by a partnership to a corporation, which succeeded to its business, covering all its personal property and all its "rights, privileges, and choses in action," carries the right to the books of the firm.

On motion of the receiver to compel H. D. Turney to deliver to him the books of the firm of Turney & Jones on the ground that they are the property of the Turney & Jones Company.

Winston & Meagher, for complainant.

Outhwaite & Linn, for defendant.

TAFT, Circuit Judge. By bill of sale dated the 28th of January, 1897, the firm of Turney & Jones, consisting of H. D. Turney and J. F. Jones, in consideration of \$150,000, paid to the Turney & Jones Company, bargained, sold, granted, and conveyed to the Turney & Jones Company, its successors and assigns, the following described property, to wit: "All its rights, privileges, choses in action, leases, owned or contracted for by the said firm and partnership, and in which the said firm and partnership has any interest, present or to come, and all personal property of said firm and partnership, of all kind and description, and wheresoever situate; to have and to hold the same unto the said the Turney & Jones Company, its successors and assigns, forever." I have no doubt, from the language of the bill of sale, that it did carry the books of the firm of Turney & Jones. The affidavits which have been filed by employes of Turney & Jones do not in the slightest degree affect this conclusion. The purport of them is that the books have always been in the custody of H. D. Turney. As

H. D. Turney was the president of the Turney & Jones Company, and in the active management thereof, his possession was ambiguous. It might have been his own possession, or it might have been the possession of the company. As the bill of sale conveyed the books, it must be presumed that his custody was that of the company. The receiver makes affidavit that the books contain certain accounts which are necessary to him in the settlement of the estate of the Turney & Jones Company. I can readily understand why this should be so. An order has already been issued directing Mr. Turney to turn over the books to the receiver. The order was issued, however, without notice to Turney, and the receiver was directed to notify Turney's counsel that, if he desired to be heard, the order would be treated as an order nisi. The hearing has now been had. The evidence has been submitted. Upon that evidence I find that the books are the property of the Turney & Jones Company; that they were in the custody of H. D. Turney, as president of that company, at the time the bill herein was filed, and the receiver was appointed. It became the duty of H. D. Turney, therefore, to turn the books over to the receiver. He expresses an entire willingness to obey the order of the court, and a new order will be entered reciting the fact that the previous order was treated as an order nisi, and after a full hearing the court directs that H. D. Turney turn the books over to the receiver. The costs of this proceeding will be taxed to the fund.

CITY OF PITTSBURG v. MURPHY et al.

(Circuit Court of Appeals, Third Circuit. June 28, 1899.)

(No. 21, March Term.)

MUNICIPAL CORPORATIONS — ASSESSMENTS FOR IMPROVEMENTS — VALIDITY OF LIEN.

Act Pa. Feb. 24, 1871 (P. L. 126), provides for the making and keeping in the office of the engineer of the city of Pittsburg of books of plans showing the situation and dimensions of property in the city, and also containing the names of the owners, and a record of transfers. It makes it the duty of owners to have their property registered in such books, requires grantees to have their conveyances entered thereon before they shall be eligible to record, and prothonotaries and clerks of courts in which proceedings for partition shall be had to make reports thereof to the engineer showing the divisions and transfers of property therein made, and provides that property shall not be subject to sale for taxes or other municipal claims except in the name of the registered owner. The purpose of the act, as declared by the supreme court of the state, is to facilitate the assessment and collection of taxes and municipal claims on real estate, and to protect the registered owners against the sale of their property for taxes or assessments without notice to them. A conveyance made in 1837 of what was then a rural tract of land, but later became a part of the city, was entered on the books of the engineer. In 1871, after the death of the grantee, the land was partitioned among her heirs, but the proceedings were not reported to the engineer by the clerk as required by law. Subsequently one of the heirs to whom a portion had been allotted subdivided the same, the plan thereof being approved by the engineer, and entered on his books in the name of the heir. *Held* that, as to the lots shown by such subdivision, the heir, and not her ancestor, was