

of Kentucky, have failed to comply with the provisions of article 236 of the constitution of the state of Louisiana, which provides that no foreign corporation shall do any business in this state without having one or more known places of business, and an authorized agent or agents in the state upon whom process may be served. Held, that the provision of the constitution of Louisiana referred to, being an attempt on the part of the state to interpose a restriction on navigation, and therefore in conflict with the provisions of the act of congress approved February 18, 1793, passed in pursuance of a clear authority under the constitution of the United States, is null and void. *Sinnot v. Davenport*, 22 How. 227.

Exception overruled, and judgment rendered in favor of plaintiffs in each cause.

### HICKORY FARM OIL Co. v. BUFFALO, N. Y. & P. R. Co.

(Circuit Court, W. D. Pennsylvania. August 13, 1887.)

#### 1. FOREIGN CORPORATIONS—RIGHT TO HOLD REAL ESTATE—EFFECT OF DEED.

Under the Pennsylvania act of April 26, 1855, (1 Purd. 861,) which forbids a foreign corporation to "acquire and hold" real estate, a deed of conveyance of land to such a corporation is not void. It passes the title, and the corporation may hold the land subject to the commonwealth's right of escheat.

#### 2. SAME—RIGHT OF OBJECTION.

The commonwealth alone can object to the legal capacity of a corporation to hold real estate.<sup>1</sup>

Ejectment. Question of law reserved.

*John Dalzell*, for plaintiff.

*J. D. Hancock*, for defendant.

ACHESON, J. By consent of the parties, a verdict was taken in favor of the plaintiff, subject to the opinion of the court as to the law, upon the following agreed state of facts:

"(1) It is admitted that the plaintiff has a good record title to the land described in the writ, which is part of a larger tract, containing in all about 400 acres, purchased by and conveyed to plaintiff in 1864.

"(2) That the plaintiff is a corporation, organized under the laws of New York, in the year 1864, under the provisions of an act of the legislature of

<sup>1</sup>The commonwealth alone can take advantage of the want of capacity in a corporation to take and hold land. *Bone v. Canal Co.*, (Pa.) 5 Atl. Rep. 751; *Railroad Co. v. Lewis*, (Iowa,) 4 N. W. Rep. 842.

When a corporation is incompetent by its charter to take a legal title to real estate, a conveyance to it is not void, but only voidable, and the sovereign only can object. It is valid until assailed in a direct proceeding for that purpose. *Land Co. v. Bushnell*, (Neb.) 8 N. W. Rep. 389.

Restrictions imposed by the charter of a corporation upon the amount of property that it may hold cannot be taken advantage of collaterally by private persons, but only in direct proceedings by the state. *Jones v. Habersham*, 2 Sup. Ct. Rep. 336.

Where a foreign corporation has the power to acquire real estate, so far as necessary for business, its acquisition of realty cannot be assailed in a collateral proceeding as an act *ultra vires*. Such a question can be raised by the state only, and in a direct proceeding. *Barnes v. Suddard*, (Ill.) 7 N. E. Rep. 477.

the state of New York entitled 'An act to authorize the formation of corporations for manufacturing, mining, mechanical, and chemical purposes,' passed February 17, 1843, and the several supplements thereto.

"(3) The articles of association of said corporation contain, *inter alia*, the following paragraph: '(11) The objects for which said company is formed are to acquire by purchase, lease, or otherwise, and to hold and convey lands in the mineral oil producing regions of Pennsylvania, and elsewhere, and to carry on the business of mining and boring for petroleum or mineral oils, and other mineral products of such lands, and extracting the same from the earth.'

"(4) If the court shall be of opinion that, under the law, the plaintiff is entitled, upon the facts as recited, to recover, then judgment to be entered on the verdict for the plaintiff; otherwise judgment to be entered for the defendant *non obstante veredicto*."

By the fifth section of the act of assembly of the commonwealth of Pennsylvania of April 26, 1855, (P. L. 329; 1 Purd. 361,) it is enacted that "no corporation other than such as shall have been incorporated under the laws of this state, nor shall any foreign government, potentate, or power, hereafter acquire and hold any real estate within this commonwealth, directly in the corporate name, or by or through any trustee or other device whatsoever, unless specially authorized to hold such property by the laws of this commonwealth." And by the ninth section of said act (1 Purd. 719) it is provided that all property hereafter "acquired and held" by corporations forbidden by said act to hold the same, or held contrary to the intent of the act, shall escheat to the commonwealth; and, upon the same being adjudged to have escheated under judicial proceedings by *quo warranto*, it shall be taken into possession, and disposed of as in cases of property escheated for defect of heirs.

The question of law arising upon the agreed state of facts is whether the plaintiff, in view of the above recited provisions of the act of April 26, 1855, by its purchase of the land in controversy, and the conveyance to it of the title thereto, acquired the legal estate therein. If the plaintiff has the legal estate in the land, it can of course recover, for the defendant has shown no title whatever, but, as against the plaintiff, is a mere intruder.

The leading case in Pennsylvania on the subject of the effect of a conveyance of real estate to a corporation forbidden by law to "purchase and hold" the same, is that of *Leazure v. Hillegas*, 7 Serg. & R. 313, in which it was held that such corporation might purchase and take title to the real estate; its title, however, like that of an alien, being defeasible at the pleasure of the commonwealth. That case, and the later case of *Gowndie v. Water Co.*, 7 Pa. St. 233, settle the principle that the commonwealth alone can object to a want of capacity in a corporation to hold land. In *Runyan v. Lessee of Coster*, 14 Pet. 122, (a Pennsylvania case in its facts singularly like the present case,) the supreme court of the United States, following the ruling in *Leazure v. Hillegas*, sustained the right of a foreign corporation to maintain an action of ejectment for land which it was not licensed to hold under the laws of Pennsylvania, the commonwealth not having exercised its right of escheat.

The supreme court of Pennsylvania had occasion to consider the act of April 28, 1855, in the case of *Slate Co. v. Savings Bank*, 8 Wkly. Notes Cas. 430, and therein declared that it was a mortmain act, disabling foreign corporations from acquiring and holding real estate, but the commonwealth only can take advantage of the disability, and that it was not intended that a deed to a foreign corporation should be void so as not to pass the estate of the grantor. Evidently these cases are decisive in favor of the plaintiff's right, upon the agreed facts, to maintain this action.

The court, then, being of opinion that under the law the plaintiff is entitled, upon the facts agreed on, to recover the land described in the writ of ejectment, it is ordered that judgment be entered on the verdict in favor of the plaintiff.

### EASTMAN v. CLACKAMAS Co.

(Circuit Court, D. Oregon. September 5, 1887.)

#### 1. COUNTIES—DEFECTIVE HIGHWAYS—BRIDGES.

By the law of Oregon, a county has charge and supervision of all the public roads therein, and, by means of road-districts, supervisors, and local taxation, is provided with the means to open and keep them in repair, and is therefore on principle liable at common law for any injury to person or property resulting from its act or omission in the construction or maintenance of a bridge on such highway.<sup>1</sup>

#### 2. CONSTITUTIONAL LAW—"REMEDY BY DUE COURSE OF LAW."

Section 10 of article 1 of the constitution of the state declares that "every man shall have remedy by due course of law for injury done him in person, property, or reputation." At and long prior to the formation and adoption of the constitution the statute of Oregon gave any person an action against a county for an injury to his rights arising from some act or omission thereof, which statute was continued in force by section 7 of article 18 thereof. *Held*, that such remedy for such injury, or its equivalent, was secured to the party by the constitution, and therefore it is not in the power of the legislature to deprive him of it.

#### 3. STATUTORY CONSTRUCTION—REPEAL.

A statute of Oregon passed in 1854 gave an action against a county for an injury arising from its act or omission, which was continued in force after the adoption of the constitution by section 7 of article 18 thereof, and on the adoption of the Code of Civil Procedure, in 1862, the provision was carried into section 347 thereof; but on February 21, 1887, the legislature amended said section so as to omit such provision, without making any express provision as to any existing right of action thereunder. *Held* that, in the absence of any express provision to that effect, the act of 1887 ought not to be construed so as to affect or take away any such rights, and did not affect this action then pending in this court for damages for such an injury.

#### 4. HIGHWAYS—NOTICE OF DEFECT.

A supervisor of roads is the agent of the county within his district, and notice to him of a defect in a highway therein is notice to the county; and what he may know of such defect in the diligent discharge of the duties of his office he has notice of, and the county also.

(Syllabus by the Court.)

<sup>1</sup>See note at end of case.