

"It was hoped and believed that, by associating a number of live-stock properties in different sections of the country, advantage could be taken of favoring circumstances possessed by these different properties, but not common to all; * * * that, in short, by uniting the different properties, putting them under a common management, introducing economy, husbanding resources, the live-stock business could be profitably conducted; that in order to secure efficient management thereof the entire property thus associated and the absolute control of the same was vested in a board of trustees."

The corporations thus associated renounced autonomy, but not their existence. They committed their affairs into the hands of the trust, because they could be better managed by the trust than by themselves. They still lived and owned their property, but the trust was a regency of their own creation, with absolute and irrevocable power over all their concerns. Ten corporations are mentioned in the affidavits as thus united in the trust, not by the direct act of the corporations, but by transfer of their stock to the trust, or to persons holding in its interest. And it is urged that by some general expressions in the articles of association the trust was given absolute authority to sell and dispose of the stock in its discretion. But this interpretation is not in accord with the purpose for which the trust was organized. The stock was transferred to the trust, not for the purpose of being sold, but to give control of the corporation; to make the officers puppets in the hands of the trust, and thus substitute the latter as the governing body of the corporation. In other words, the purpose of the association was, not to buy and sell corporations in open market, but to manage and control them. In this view it is clear enough that the sale of the stock by the trust was wholly inconsistent with the scheme of its organization. The doctrine leads to *felo de se*. If by selling the stock of one corporation, and thus parting with its control over it, the trust may renounce its function, the same course may be pursued as to all the corporations in its control. This cannot be. It is absurd to suppose that the projectors of the scheme would thus implant in it the seeds of dissolution. So that, if we accept the articles of association for all that they purport to be, there was in the trust no power to sell the stock of the corporations which it held. Furthermore, the transfer of stock to the trust was without consideration. The trust had no property and no expectation of acquiring any. As before stated, it was organized for controlling corporations, and not for holding or acquiring property in its own right. The certificates of the trust issued in exchange for the stock of the Phoenix Farm & Ranch Company were on their face "shares in the equity to the property held by the trustees of the American Cattle Trust," and did not convey any property whatever. The stock thus obtained was given to complainant in exchange for other certificates of the trust, which he says he had previously purchased for a valuable consideration. To allow the trust to acquire stock from some of its members and transfer it to others by issuing and canceling certificates in this manner would be nothing less than common jugglery. Upon all that appears in the record, it must be said that the trust was without authority to alienate any of the stock of the several corporations in its control,

and therefore complainant's title to the stock of the Phoenix Farm & Ranch Company is not good. The motion for injunction will be denied.

CENTRAL TRUST CO. v. CENTRAL IOWA RY. CO. *et al.*

(Circuit Court, S. D. Iowa, C. D. May 29, 1889.)

1. JUDGMENT—LIEN—COSTS.

Under Code Iowa, § 1309, declaring that a judgment against a railway corporation for damages for personal injuries shall be a lien on the corporate property superior to the lien of mortgages, etc., the costs necessarily resulting from the action to procure the judgment and enforce the lien are entitled to like priority.

2. COSTS—IN FEDERAL COURTS.

Pending an action by petitioner in the state courts against defendant company for damages for personal injuries, an action was brought in the federal court to foreclose a mortgage on defendants' property, and a receiver was appointed, whereupon petitioner intervened in the foreclosure proceeding, and obtained a judgment for the damages; testimony previously taken in the state court being used on the trial of the intervention. *Held*, that the costs incurred in the state courts, as well as those in the federal court, should be allowed to petitioner.

In Equity. Foreclosure proceedings. Petition of William Kellow, Jr., administrator, for payment of judgment and costs.

H. T. Reed and *A. Chapin*, for petitioner.

A. C. Daly, for receiver.

SHIRAS, J. Prior to the initiation of the proceedings for the foreclosure of the mortgage upon the line of railroad owned by the Central Iowa Railway Company, William Kellow, Jr., as administrator of the estate of H. E. Carter, brought an action against the railway company to recover damages on the ground that Carter's death had been caused by the negligence of the company, the action being brought in the state court. On the trial of the case a verdict for defendant was rendered, which the trial court set aside, and ordered a new trial. On appeal to the supreme court of the state this order was affirmed. 23 N. W. Rep. 740, and 27 N. W. Rep. 466. In the mean time, proceedings for the foreclosure of the mortgage resting upon the railroad were instituted in this court, a receiver of the property being appointed. Thereupon the administrator applied to this court for leave to join the receiver as a party defendant to the action pending in the state court, which was refused, whereupon the administrator filed an intervening petition in the foreclosure proceedings, and upon the report of the master that he had shown good cause, the action was set down for trial before a jury, and at the October term, 1888, of this court a verdict was returned in favor of the petitioner, assessing the damages at \$2,500.

The present petition seeks an order for the payment of this sum, with interest and costs, including therein the costs on the original trial in the