

## EX PARTE COCKCROFT.

A person cannot appeal from a decree rendered in a suit whereto he was not a party.

PETITION for a writ of *mandamus*.

The facts are stated in the opinion of the court.

*Mr. William E. Earle* for the petitioner.

There was no opposing counsel.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This is a petition for a writ of *mandamus* requiring the Circuit Court of the United States for the District of South Carolina to allow an appeal by the petitioner from an order of the court entered on the 7th of October, 1881, confirming a sale of a railroad made pursuant to a decree filed on the 25th of September, 1880, in the suit of *Calvin, Claflin, and Others v. The South Carolina Railroad Company and Others*. The petitioner was not a party to the suit, neither does it appear that he ever asked to be made a party. He is not the holder of any of the bonds that by the decree under which the sale was made are entitled to a distributive share of the proceeds. Unless the property should bring at another sale enough to satisfy the mortgages and leave the balance for distribution among the general creditors of the company, he can get no advantage from setting aside the sale which has already been made. In his showing to the Circuit Court he certainly did not make it appear that he had any real interest in the controversy. He was evidently heard as a matter of favor, and not because he had any right to intervene. Before confirming the sale the court seemed desirous of ascertaining whether, under all the circumstances, in the exercise of its judicial discretion such an order ought to be made. For this purpose it was willing to consider the affidavits produced by the petitioner. This seems to have been done out of abundant caution, not because it was necessary in law.

Inasmuch, therefore, as the petitioner was not made a party

to the suit, either by an express order of the court to that effect, or by being treated as such, his application for an appeal was properly denied. This case cannot be distinguished in principle from *Ex parte Cutting*, 94 U. S. 14.

*Motion denied.*

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COUNTY OF CLAY v. SOCIETY FOR SAVINGS.

1. The legislation of the State of Illinois reviewed, whereunder the county of Clay issued two series of bonds, one dated Nov. 1, 1869, in payment of its subscription to the stock of the Illinois Southeastern Railway Company, and another dated Jan. 4, 1871, whereby its donation voted before the year 1870 to that company was paid.
2. The bonds are valid, as they were issued in strict conformity to the conditions and requirements prescribed by statute, and pursuant to a popular vote cast at an election lawfully held before the year 1870. The Constitution of Illinois, which took effect during that year, does not attempt to impair the obligation of any prior contract in regard to them, nor prohibit the issue of such as were necessary to give effect to a donation so voted.
3. Where a *bona fide* holder for value of a county bond sues thereon, its recitals, showing that it was issued in accordance with the statute, are conclusive and binding, and the fact that for many years its validity has been recognized by paying the interest thereon as it became due cures mere irregularities in issuing it. The county cannot, by setting them up, escape liability.

ERROR to the Circuit Court of the United States for the Southern District of Illinois.

On Nov. 6, 1849, the legislature of Illinois passed an "Act authorizing counties and cities in the State of Illinois to subscribe to the capital stock or make loans to railway companies," which contained the following provisions:—

"SECT. 1. Whenever the citizens of any city or county in this State are desirous that said city or county should subscribe for stock in any railroad company, already organized or incorporated, or hereafter to be organized or incorporated, under any law of this State, such city or county may, and are hereby authorized to, purchase or subscribe for shares of the capital stock in any such company, in any sum not exceeding \$100,000, for each of such cities or counties, and the stock so subscribed for or purchased shall be