

judgment of the said District Court for the District of Louisiana, in this case, be, and the same is hereby affirmed, with costs and damages, at the rate of eight per centum per annum, including interest on the amount of the judgment of the said District Court.

1823.

~~~~~  
 Nicholas  
 v.  
 Anderson.

[CHANCERY. LOCAL LAW.]

PHILIP NORBORNE NICHOLAS, Attorney General of Virginia, v. RICHARD C. ANDERSON, Surveyor, &c.

Under the act of Assembly of Virginia, of October, 1783, for the better locating and surveying the lands given to the officers and soldiers on Continental and State establishments, the State of Virginia has no right to call upon the person who was appointed one of the principal surveyors, to account for the fees received by him, of one dollar for every hundred acres, on delivering the warrants, towards raising a fund for the purpose of supporting all contingent expenses; the bill filed by the Attorney General of the State, to compel an account, not sufficiently averring the want of any proper private parties *in esse* to claim it.

*Quære*, Whether, in such a case, the assignees of the warrants, or a part of them, suing in behalf of the whole, could maintain a suit in equity for an account?

APPEAL from the Circuit Court of Kentucky. This was a bill in equity, filed by, and in the name of the Attorney General of Virginia, under the authority of a special act of the Legislature of that State, passed on the 15th of February, 1813.

1823.

Nicholas  
v.  
Anderson.

The bill charged, that the Legislature of Virginia, by an act passed in October session, 1783, among other things, provided, that all persons holding officers' or soldiers' warrants by assignment, should pay down to the principal surveyor, at the time of the delivery of such warrants, one dollar for every hundred acres thereof, exclusive of the legal surveyor's fees, towards raising a fund for the purpose of paying all contingent expenses, &c. as will appear by reference to the act. That the deputations of officers, in pursuance of the said act, appointed two principal surveyors, one of whom was the defendant, and who immediately took upon himself the duties of the office, and exacted, in virtue of the act of 1783, from all the holders of the military warrants, the one dollar per one hundred acres above provided for. That the defendant had received a large sum of money in this way, and had refused to account for the same to the complainant, and the agents and attorneys appointed for this purpose under the act of 1813. It further charged a misapplication of the money; and that the deputations of officers, under the act of 1783, did appoint superintendants, &c. but that most of them are long since dead, and the survivors have declined to act for many years. It proceeded to state the substance of the act of 1813, which authorized Colonel John Watts, the surviving superintendant, agent to settle with the defendant, and to receive the moneys remaining unappropriated in his hands, and if not paid, to sue for, and recover the same, in the name of the Attorney General of Virginia; and then charged,

that the defendant refused to account with Watts, and concluded with a prayer for an account, discovery, and general relief. To this bill the defendant demurred; and the Circuit Court of Kentucky, upon argument of the demurrer, held it valid, and dismissed the bill. The cause was then brought by appeal to this Court.

The *Attorney General*, for the plaintiff, argued, that the State of Virginia still considered the defendant as an officer of that State, and he was so styled in the bill.<sup>a</sup> The demurrer also admitted the fact. The authority given to the superintendents has expired. The defendant, who, as surveyor, has received large sums of money, under an act of the Legislature of Virginia, is now called on to account for it. A special act has also been passed, to authorize the Attorney General to proceed in equity, under which the present bill was filed. The argument on the part of the defendant must be, that the deputations of officer no longer existing, the money belongs to him. The State, however, does not claim this money as beneficially entitled to it, but as a trustee for those who are so entitled. She claims, in virtue of her sovereignty, a right to superintend the execution of the law by her own officer. And it is a familiar and well established principle, that wherever a trust fails, there is a resulting trust in the grantor for the benefit of the *cestui que trusts*. So, if a corporation endowed for a particular pur-

1823.

Nicholas

v.

Anderson.

Feb. 13th.

1823.

Nicholas  
v.  
Anderson.

pose, which fails, the funds revert back to the grantor by whom it was created or endowed.<sup>a</sup>

Mr. *Talbot*, contra, insisted, (1.) That the fees in question were for the exclusive benefit, and belonged of right to the owners of the warrants, under whose control, or that of the superintendants, it must always remain; and that consequently the State of Virginia had no authority, such as that pretended to be exercised by the special act of 1813, to vest in the Attorney General of that State, or any other person, a right to sue for the recovery of the sums of money supposed to be due from the defendant. The plaintiff has not shown any interest in the subject, entitling him to sue; nor can there be a resulting trust, where it is not shown that the original trustees are no longer *in esse*. (2.) That the State of Virginia having, previous to the passage of the act, authorized the erection of the District of Kentucky into an independent State, within the limits of which the defendant resided, and where he was to perform his official duties, he was no longer accountable to the State of Virginia, from whom he had not even derived his original appointment; nor could that State, by any legislative act, impose upon him the duty of answering the complaint stated in the bill.

Feb. 24th.

Mr. Justice **STORY** delivered the opinion of the Court; and, after stating the case, proceeded as follows:

*a Co. Litt. 13 b. Godb. 211.*

The question in this case is, whether the demurrer was well taken. In support of the decree, two points are stated at the bar: 1st, that the plaintiff has not shown any interest in the subject, entitling the State of Virginia to maintain the bill; 2dly, that if there was originally any resulting authority to the State, to compel an account, that power, by the erection of Kentucky into an independent State, devolved on the latter State, the defendant having been, and still continuing to be, a citizen of that State; and that it was not competent for the Legislature of Virginia, in 1813, to pass a law, which should bind a citizen of Kentucky to account for official duties, which were not performed in virtue of any appointment made by the government of Virginia.

It is unnecessary to consider the last objection, because we are of opinion that the first is fatal to the bill. The act of 1783, for the better locating and surveying the lands given to the officers and soldiers on Continental and State establishments, authorizes the deputations of officers, therein named, to appoint superintendants, in behalf of their respective lines, for the purpose of surveying the lands; and also to appoint two principal surveyors, and contract with them for their fees, &c. The third section of the act then provides, "that every person or persons holding officers' or soldiers' warrants, by assignment, shall pay down to the principal surveyors, at the time of the delivering such warrant or warrants, one dollar for every hundred acres thereof, exclusive of the legal surveyor's fees, towards raising a fund for the pur-

1823.

Nicholas  
v.  
Anderson.

1823.

Nicholas  
v.  
Anderson.

pose of supporting all contingent expenses; or, at the option of such holder or holders, the same may be held up until the warrants of all the original grantees have been surveyed; *the said surveyors to account for all the money so received, to such person or persons as the said deputations may direct.*" This is the clause upon which the bill is founded. And it is apparent, that in terms it provides for an accountability, not to the State, but to persons to be appointed by the deputations of officers; to those for whose benefit the fund was raised, and was to be applied, and not to the State, which had no interest whatsoever in it. Even then, if by the death of all the deputations of officers, without making any appointment, the authority intended by the act became incapable of being executed, there is no averment in the bill to that effect; on the contrary, the bill does admit that superintendants were appointed, of whom some are dead, and the survivors decline to act. If, therefore, under any circumstances, a resulting power could arise to the State to enforce an account, from the want of any proper private parties *in esse* to claim it, such a case is not stated by the bill. Whether, in such a case, the assignees of the warrants, or a part of them, suing in behalf of the whole, might not maintain a suit in equity for an account, is not for us now to determine. It is sufficient that the State of Virginia, by the very terms of the act, has delegated to other persons, whose existence is not denied, the authority to call the surveyors to account.

Decree affirmed, with costs.