

Mumma v. Potomac Company.

sugar in this manner, for the purpose of shipment to New Orleans, to be made into refined sugar, at his establishment or refinery at that place. Yet we do not think, under the evidence in the cause, we, as an appellate court, ought to reverse the decree of the court below, and decree a forfeiture, especially, as we cannot say, from the evidence, that the article, in point of fact, differs from the entry at the custom-house. It is difficult to say, what is its true denomination; the witnesses speak of it as a new article, not known in trade; none call it sugar; all seem to think it may be called syrup, in some sense, though several think it is not such, according to the understanding of that article in trade and commerce. Upon the whole, we think the decree of the court below ought to be affirmed, and a certificate of probable cause of seizure be certified of record.

This cause came on to be heard, on the transcript of the record from the district court of the United States for the eastern district of Louisiana, and was argued by counsel: On consideration whereof, it is ordered, adjudged and decreed by this court, that the decree of the said district court in this cause be and the same is hereby affirmed, and that a certificate of probable cause of seizure be certified of record.

\*281] \*JACOB MUMMA, Plaintiff in error, v. The POTOMAC COMPANY.

*Dissolution of corporation.*

The 13th section of the act of Virginia, of January 1824, incorporating the Chesapeake and Ohio Canal Company, declares, that upon such surrender and acceptance, "the charter of the Potomac Company shall be, and the same is hereby, vacated and annulled, and all the powers and rights thereby granted to the Potomac Company shall be vested in the company hereby incorporated." By this provision, the Potomac Company ceased to exist, and a *scire facias* on a judgment obtained against the company, before it was so determined, cannot be maintained.

There is no pretence to say, that a *scire facias* can be maintained, and a judgment had thereon, against a dead corporation, any more than against a dead man.

The dissolution of the corporation, under the acts of Virginia and Maryland (even supposing the act of confirmation of congress out of the way), cannot, in any just sense, be considered, within the clause of the constitution of the United States on this subject, an impairing of the obligation of the contracts of the company, by those states, any more than the death of a private person may be said to impair the obligation of his contracts. The obligation of those contracts survives; and the creditors may enforce their claims against any property belonging to the corporation, which has not passed into the hands of *bond fide* purchasers; but is still held in trust for the company, or for the stockholders thereof, at the time of its dissolution, in any mode permitted by the local laws.<sup>1</sup>

A corporation, by the very terms and nature of its political existence, is subject to dissolution, by a surrender of its corporate franchise, and by a forfeiture of them for wilful misuser and non-user; every creditor must be presumed to understand the nature and incidents of such a body

<sup>1</sup> Upon general principles of law, a creditor of an insolvent corporation can pursue its assets into the hands of all persons, except *bond fide* creditors and purchasers. *Curran v. Arkansas*, 15 How. 304. Valid contracts made by a corporation survive even its dissolution by voluntary surrender or sale of its corporate franchises, and the creditors of the corporation, notwithstanding such surrender or sale, may still en-

force their claims against the property of the corporation, as if no such sale had taken place. *Mississippi and Missouri Railroad Co. v. Howard*, 7 Wall. 410. Moneys derived from the sale and transfer of the franchises and capital stock of an incorporated company are the assets of the corporation, and, as such, constitute a fund for the payment of its debts. *Seaman v. Kimball*, 92 U. S. 367.

## Mumma v. Potomac Company.

politic, and to contract with reference to them; and it would be a doctrine new in the law, that the existence of a private contract of the corporation should force upon it a perpetuity of existence, contrary to public policy, and the nature and objects of its charter.<sup>1</sup>

ERROR to the Circuit Court of the District of Columbia and county of Washington.

At a circuit court of the district of Columbia, held at Washington city, on the first Monday of June 1818, Jacob Mumma, the plaintiff in error, recovered a judgment against the Potomac Company, the defendants in error, for the sum of \$5000. No steps were taken to enforce the payment of the judgment, nor any further proceedings had in relation thereto, until the 18th day of April 1828, on which \*day, a writ of *scire facias* was [ \*282 issued from the clerk's office of said court, against the said Potomac Company, to revive said judgment, which case was continued, by consent of parties, from term to term, until December term of said court, in the year 1830, at which term, the following plea and statement were filed by the consent of parties.

"The attorneys upon the record of the said defendants, now here suggest and show to the court, that since the rendition and record of said judgment, the said Potomac Company, in due pursuance and execution of the provisions of the charter of the Chesapeake and Ohio Canal Company, enacted by the states of Maryland and Virginia, and by the congress of the United States, have duly signified their assent to said charter, &c., and have duly surrendered their charter and conveyed, in due form of law, to the said Chesapeake and Ohio Canal Company, all the property, rights and privileges by them owned, possessed and enjoyed under the same, which surrender and transfer from the said Potomac Company, have been duly accepted by the Chesapeake and Ohio Canal Company, as appears by the corporate acts and proceedings of said company, and final deed of surrender from the said Potomac Company, dated on the 15th of August 1828, duly executed and recorded in the several counties of the states of Virginia and Maryland and the district of Columbia, wherein said Potomac Company held any lands, and wherein the canal sand works of said company were situated; which said corporate acts and proceedings the said attorneys here bring into court, &c., whereby the said attorneys say, the charter of said Potomac Company became and is vacated and annulled, and the company and the corporate franchises of the same are extinct, &c."

Whereupon, the following statement and agreement were entered into and signed by the counsel for both parties, and made a part of the record. "The truth of the above suggestion is admitted; and it is agreed to be submitted to the court, whether, under such circumstances, any judgment can be rendered against the Potomac Company upon this *scire facias*, reviving the judgment in said writ mentioned, and that reference for the said corporate acts and proceedings, and the deed in the above \*suggestion [ \*283 mentioned, be had to the printed collection of acts, &c., printed and published by authority of the president and directors of the Chesapeake and Ohio Canal Company in 1828."

<sup>1</sup> A decree dissolving a national bank, at the suit of the comptroller of the currency, operates to abate a pending suit against it, commenced

by attachment, to enforce the demand of an individual creditor. *National Bank v. Colby*, 21 Wall. 609.

Mumma v. Potomac Company.

The circuit court gave judgment to the defendants, and the plaintiff prosecuted this writ of error.

The case was argued by *Brent* and *Tabbs*, for the plaintiff in error; and by *Jones* and *Coxe*, for the defendants.

For the plaintiff in error, it was contended: 1st. The corporate existence of the Potomac Company, was not so totally destroyed by the operation of the deed of surrender, as to defeat the rights and remedies of its creditors. 2d. The deed of surrender violates its obligation of contract, and can derive no legal effect from the several legislative acts which purport to authorize it.

After the counsel for the plaintiff in error, and for the defendant, had proceeded in the discussion of the case, the court intimated, that "the agreement of the counsel completely covered the first point, and precluded any examination of it." The arguments on this point are, therefore, omitted.

Upon the second point, the counsel for the plaintiff in error contended, that the surrender of the property by the Potomac Company to the Chesapeake and Ohio Canal Company, was void, as it operated to impair the lien acquired by the judgment. The acts of the legislatures of Virginia and Maryland would be unconstitutional, if such were their operation, as they would violate the contract under which the judgment was obtained. Upon this point, the following authorities were cited. *Sturges v. Crowninshield*, 4 Wheat. 207; *Green v. Biddle*, 8 Ibid. 84; *Fletcher v. Peck*, 6 Cranch 87; *Terrett v. Taylor*, 9 Ibid. 43; *Town of Pawlet v. Clarke*, Ibid. 292; *Dartmouth College v. Woodward*, 4 Wheat. 518; *Calder v. Bull*, 3 Dall. 386; *Dash v. Van Kleeck*, 7 Johns. 492, 499; 2 \*Gallis. 139; *Gilmour v. Shuter*, 2 Mod. 310; 2 Lev. 227; *Couch v. Jeffries*, 4 Burr. 2460. \*284]

*Jones* and *Coxe* argued, that the lien of the judgment remained, and thus no violation of the constitutional guarantee of the vested right of the plaintiff in error was the consequence of the surrender of the property. If the judgment of the plaintiff could have been enforced against the property of the Potomac Company, the same right to proceed against the same property in the lands of the Chesapeake and Ohio Company existed. Under this view of the case, the proceedings of the Potomac Company could have no effect on the rights of the plaintiff in error.

STORY, Justice, delivered the opinion of the court.—This is a writ of error to the circuit court of the district of Columbia, for the county of Washington. The case presented on the record is shortly this: The plaintiff in error, Mumma, in June 1818, recovered a judgment against the Potomac Company, for the sum of \$5000. No steps were taken to enforce the payment of the judgment, nor any further proceedings had in relation thereto, until the 18th day of April 1828, on which day a writ of *scire facias* was issued from the clerk's office of said court, against the said Potomac Company to revive said judgment, which case was continued, by consent of parties, from term to term, until December term of said court, in the year 1830, at which term, the following plea and statement were filed by consent of parties.

"The attorneys upon the record of the said defendants, now here suggest and show to the court, that since the rendition and record of said judg-



Mumma v. Potomac Company.

ment, the said Potomac Company, in due pursuance and execution of the provisions of the charter of the Chesapeake and Ohio Canal Company, enacted by the states of Maryland and Virginia, and by the congress of the United States, have duly signified their assent to said charter, &c., and have duly surrendered their charter, and conveyed, in due form of law, to the said Chesapeake and Ohio Canal Company, all the property, rights and privileges by them owned, possessed and enjoyed under the same ; which \*surrender and transfer from said Potomac Company, have been duly [\*285 accepted by the Chesapeake and Ohio Canal Company, as appears by the corporate acts and proceedings of said company, and final deed of surrender from the said Potomac Company, dated on the 15th day of August 1828, duly executed and recorded in the several counties of the states of Virginia and Maryland, and the district of Columbia, wherein said Potomac Company held any lands, and wherein the canals and works of said company were situated ; which said corporate acts and proceedings, the said attorneys here bring into court, &c., whereby the said attorneys say, the charter of the said Potomac Company became and is vacated and annulled, and the company and the corporate franchises of the same are extinct," &c.

Whereupon, the following statement and agreement were entered into and signed by the counsel for both parties, and made a part of the record. "The truth of the above suggestion is admitted ; and it is agreed to be submitted to the court, whether, under such circumstances, any judgment can be rendered against the Potomac Company upon this *scire facias*, reviving the judgment in said writ mentioned, and that reference for the said corporate acts and proceedings, and the deed in the above suggestion mentioned, be had to the printed collection of acts, &c., printed and published by authority of the president and directors of the Chesapeake and Ohio Canal Company in 1828." Upon this statement and agreement, the circuit court gave judgment, that the plaintiff take nothing by his writ ; and the question now is, whether this judgment is warranted by law.

Two points have been made at the bar. 1. That the corporate existence of the Potomac Company was not so totally destroyed by the operation of the deed of surrender, as to defeat the rights and remedies of the creditors of the company. 2. That the deed of surrender violates the obligation of the contracts of the company, and that the legislative acts of Virginia and Maryland, though confirmed by the congress of the United States, are on this account void ; and can have no legal effect.

We think, that the agreement of the parties completely covers the first point, and precludes any examination of it. That \*agreement admits [\*286 the truth of the suggestions in the plea of the attorneys for the Potomac Company ; and by that it is averred, that the charter of the Potomac Company was duly surrendered to the Chesapeake and Ohio Canal Company, and was duly accepted by the latter ; and that thereby the charter of the Potomac Company became, and is, vacated and annulled. And if we were at liberty to consider the last averment, not as an averment of a fact, but of a conclusion of law, the same result would follow ; for the 13th section of the act of Virginia, of January 1824, incorporating the Chesapeake and Ohio Canal Company, declares, that upon such surrender and acceptance, "the charter of the Potomac Company shall be and the same is hereby vacated and annulled ; and all the powers and rights thereby granted

Mumma v. Potomac Company.

to the Potomac Company shall be vested in the company hereby incorporated."

Unless, then, the second point can be maintained, there is an end of the cause; for there is no pretence to say, that a *scire facias* can be maintained, and a judgment had thereon, against a dead corporation, any more than against a dead man. We are of opinion, that the dissolution of the corporation, under the acts of Virginia and Maryland (even supposing the act of confirmation of congress out of the way), cannot, in any just sense, be considered, within the clause of the constitution of the United States on this subject, an impairing of the obligation of the contracts of the company by those states, any more than the death of a private person can be said to impair the obligation of his contracts. The obligation of those contracts survives; and the creditors may enforce their claims against any property belonging to the corporation, which has not passed into the hands of *bond fide* purchasers; but is still held in trust for the company, or for the stockholders thereof, at the time of its dissolution, in any mode permitted by the local laws. Besides, the 12th section of the act incorporating the Chesapeake and Ohio Canal Company, makes it the duty of the president and directors of that company, so long as there shall be and remain any creditor of the Potomac Company, who shall not have vested his demand against the same in the stock of the Chesapeake and Ohio Canal Company (which the act enables him to do), to pay to such creditor or creditors, annually, such dividend or proportion of the net amount of \*the revenues of the Potomac Company, on an average of the last five years preceding the organization of the said Chesapeake and Ohio Canal Company, as the demand of the said creditor or creditors, at that time, may bear to the whole debt of \$175,800, (the supposed aggregate amount of the debts of the Potomac Company). So that here is provided an equitable mode of distributing the assets of the company among its creditors, by an apportionment of its revenues, in the only mode in which it could be practically done upon its dissolution; a mode analogous to the distribution of the assets of a deceased insolvent debtor.

Independently of this view of the matter, it would be extremely difficult to maintain the doctrine contended for by the plaintiff in error, upon general principles. A corporation, by the very terms and nature of its political existence, is subject to dissolution, by a surrender of its corporate franchises, and by a forfeiture of them for wilful misuser and non-user. Every creditor must be presumed to understand the nature and incidents of such a body politic, and to contract with reference to them. And it would be a doctrine new in the law, that the existence of a private contract of the corporation should force upon it a perpetuity of existence, contrary to public policy, and the nature and objects of its charter.

Without going more at large into the subject we are of opinion, that the judgment of the circuit court ought to be affirmed. But as there is no such corporation *in esse* as the Potomac Company, there can be no costs awarded to it.

THIS cause came on to be heard, on the transcript of the record from the circuit court of the United States for the district of Columbia, holden in and for the county of Washington, and was argued by counsel; On considera-

United States v. Randenbush.

tion whereof, it is ordered and adjudged by this court, that the judgment of the said circuit court in this cause be and the same is hereby affirmed, without costs.

\*UNITED STATES v. ADAM RANDENBUSH.

[\*288

*Autrefois acquit.*

The defendant was indicted, in April 1833, in the circuit court for the district of Pennsylvania, for passing a counterfeit note, of the denomination of ten dollars, purporting to be a note of the Bank of the United States, with intent to defraud the bank, &c. ; he pleaded, that the note described in the indictment had been heretofore given in evidence on the trial of the defendant, upon a former indictment found against him for passing another counterfeit ten dollar note, upon which indictment he had been acquitted.

The offence for which the defendant was indicted, and to which indictment he pleaded the plea of a former acquittal, was entirely a distinct offence from that on which the verdict of acquittal was found ; the plea does not show that he had ever been indicted for passing the same counterfeit bill, or that he had ever been put in jeopardy for the same offence : The matter pleaded is no bar to the indictment.<sup>1</sup>

CERTIFICATE of Division from the Circuit Court of Pennsylvania. The defendant was indicted, in April 1833, in the circuit court for the district of Pennsylvania, for passing a counterfeit note of the denomination of ten dollars, purporting to be a note issued by the bank of the United States, with intent to defraud the bank, *scienter*, &c.

He interposed three several pleas to this indictment, in the second of which he averred, that the note describe in the indictment, &c., was heretofore given in evidence, with the facts and circumstances attending the said passing thereof, on the trial of defendant, upon a certain former indictment found against him for passing another ten dollar counterfeit note, to sustain that indictment ; and that he was thereupon acquitted, &c. To this plea, the United States demurred, and the defendant joined in demurrer ; but as the opinions of the judges were opposed as to the judgment to be given thereon, the case was certified for the opinion of this court.

The case was argued by the *Attorney-General*, for the United States. No counsel appeared for the defendant.

\*The attorney-general submitted to the court the following points ; and referred the court to the authorities on both sides of the question presented by them. [\*289

1. It appears by the record, that the offences for which the defendant was indicted, were not the same. 2 Hale's P. C. 244 ; 4 Hawk. 316, 314 ; 1 Chit. Crim. Law 453, 456 ; 1 Leach's Crown Law 242 ; 2 Ibid. 716 ; *Rea v. Clark*, 1 Brod. & Bing. 473 ; 9 East 437 ; *Van Houton v. Harvey*, 2 New York City Hall Recorder 73.

2. The acquittal upon the first indictment does not necessarily involve any decision upon the question presented by the last. 2 East 519. For the general principle : Ibid. 522 ; *Jackson v. Wood*, 3 Wend. 27 ; 8 Ibid. 9 ; Stark. Evid. part 2, § 65, 198, 202.

<sup>1</sup> A prisoner having been tried and acquitted on a charge of having possession of a plate for printing counterfeit notes, may plead the same in bar to a second indictment, for having, at

the same time, possession of another such plate ; the act of possession is a single one. *United States v. Miner*, 11 Bl. C. C. 511. See *United States v. Flecke*, 2 Ben. 456.