

Angle Vs. Chicago, St. P., M. and Omaha Ry. Co.

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Appeal No. : 151 U.S. 1

Appellant : Angle

Respondent : Chicago, St. P., M. and Omaha Ry. Co.

Judgement :

Angle v. Chicago, St. P., M. & Omaha Ry. Co. - 151 U.S. 1 (1894)

U.S. Supreme Court Angle v. Chicago, St. P., M. & Omaha Ry. Co., 151 U.S. 1 (1894)

Angle v. Chicago, St. Paul, Minneapolis

and Omaha Railway Company

No. 78

Argued November 8-9, 1893

Decided January 8, 1894

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED

SYLLABUS

The United States granted lands to the Wisconsin, to aid in the construction of railroads. The state granted a portion of these lands to a company, called in the opinion of the Court The Omaha Company, for the purpose of constructing a defined railroad. It also granted another portion of them to another company, called in the opinion of the court the Portage Company, for the purpose of constructing another and different, and to some extent competing, railroad. The latter grant was conditioned upon the completion of the road by the grantee within a specified period. Work was begun upon the Portage road, but in 1873 the company became embarrassed, and then broke down. In 1878, the Legislature of Wisconsin extended the time for the construction of the Portage Company's road three years. In 1881, a contract was made with A. for its completion, under which work was resumed with vigor and was diligently prosecuted, with every prospect that the road would be completed within the extended time. In 1882, before the expiration of that extension, the legislature of that state passed an act revoking the grant to the Portage Company and bestowing it upon the Omaha Company. As a result of this, the work which A. was diligently performing under his contract was arrested; he was prevented through the direct and active efforts of the Omaha Company from completing his performance of it;

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the profits which he would have received from it were lost to him, and the land grant was wrested from the Portage Company. A. then commenced an action at law against the Portage Company, in which a judgment was recovered by his administratrix. Execution thereon being returned *nulla bona*, a bill in equity was filed in the Circuit Court of the United States by the administratrix against the Omaha Company to reach the land grant in its hands. The bill charged that the Omaha Company had conspired with and bribed certain officials of the Portage Company, who, through circumstances named in the bill, had become sole stockholders in that company, to wrest the land grant from the Portage Company,

and to prevent A. from completing his contract. It set forth sundry steps in the alleged conspiracy, and charged that the Legislature of Wisconsin had been induced by the conspirators to pass, the act forfeiting the land grant and bestowing it upon the Omaha Company. The defendant demurred and the demurrer was sustained by the circuit court.

HELD

(1) That the demurrer admitted that A. had suffered the wrongs complained of in consequence of the interference of the Omaha Company.

(2) That it must be assumed, as conceded by the demurrer, that the officials of the Portage Company had been bribed by the Omaha Company to betray their trust, and that the legislature had been induced by false allegations to revoke the grant to the Portage Company and to bestow it upon the Omaha Company.

(3) That as the breaking down of the Portage Company and the ruin of its contractor was the natural and direct result of all this, the contractor could resort to equity to enforce against the land grant in the hands of the Omaha Company the judgment which he had obtained at law against the Portage Company.

(4) That it must be presumed that the legislature, in transferring the grant to the Omaha Company, did not intend to affect thereby the rights of the Portage Company against the Omaha Company in the courts.

(5) That as there was nothing in the words of the grant to the Omaha Company which expressly tied up the granted land, it passed to that company subject to seizure and sale in satisfaction of any of its obligations.

(6) That the Omaha Company, by reason of its conduct in this matter, became, as to the creditors of the Portage Company, a trustee *ex maleficio* in respect of this property.

If one maliciously interferes in a contract between two parties, and induces one of them to break that contract to the injury of the other, the party injured can maintain

an action against the wrongdoer.

When a man does an act which in law and fact is a wrongful act, and injury to another results from it as a natural and probable consequence, an action on the case will lie.

A sole stockholder in a corporation cannot secure the transfer to himself of

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all the property of the corporation so as to deprive a creditor of the corporation of the payment of his debt.

When an act of the legislature is challenged in a court, the inquiry by the court is limited to the question of power, and does not extend to the matter of expediency, to the motives of the legislators or to the reasons which were spread before them to induce the passage of the act, and, on the other hand, as the courts will not interfere with the action of the legislature, so it may be presumed that the legislature never intends to interfere with the action of the courts, or to assume judicial functions to itself.

This is an appeal from a decree of the Circuit Court of the United States for the Western District of Wisconsin dismissing plaintiff's bill.

The bill was filed on the 23d of May, 1888, against the Chicago, Portage and Superior Railway Company, the Chicago, St. Paul, Minneapolis and Omaha Railway Company, and the Farmers' Loan and Trust Company. The Chicago, St. Paul, Minneapolis and Omaha Railway Company was the only defendant served with process. It appeared, and on the 28th of July filed a demurrer to the bill, which, after argument, was sustained, and on September 2, 1889, the decree of dismissal was entered. 39 F. 143; 39 F. 912.

The facts as stated in the bill are as follows: by two acts, of date June 3, 1856, and May 5, 1864, respectively, 11 Stat. 20, c. 43, and 13 Stat. 66, c. 80, Congress granted lands to the State of Wisconsin to aid in the construction of certain railroads, among others, one

"from a point on the St. Croix River or Lake, between Townships 25 and 31, to the west end of Lake Superior, and from some point on the line of said railroad, to be selected by said state, to Bayfield."

These land grants were accepted by an act of the legislature approved October 8, 1856, Laws of Wisconsin 1856, p. 137, and by a joint resolution of the legislature of the state of date March 20, 1865, Gen.Laws Wisconsin 1865, p. 689, and a map of definite location was duly filed, and accepted by the Secretary of the Interior.

By an Act of March 4, 1874, Laws Wisconsin 1874, p. 186, c. 126, the state granted to the North Wisconsin Railway Company, whose name was subsequently changed to Chicago,

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St. Paul, Minneapolis and Omaha Railway Company, and who is the defendant herein, to be hereafter called the Omaha Company, that portion of the land grant applicable to the construction of the road from a point on St. Croix River to Bayfield, and to the Chicago and Northern Pacific Air-Line Railway Company, whose name was subsequently, and before 1878, changed to that of the Chicago, Portage and Superior Railway Company, hereafter called the Portage Company, so much of said grant as was applicable to the construction of the road from the west end of Lake Superior to a junction with the line running from St. Croix River to Bayfield.

The eighth section of this act, which is the granting section to the latter company, is as follows:

"There is hereby granted to the Chicago and Northern Pacific Air-Line Railway Company all the right, title, and interest which the State of Wisconsin now has, or may hereafter acquire, in or to that portion of the lands granted to said state by said two acts of Congress as is or can be made applicable to the construction of that part of the railway of said company lying between the point of intersection of the branches of said grants, as fixed by the surveys and maps on file in the Land Office at Washington, and the west end of Lake Superior. This grant is made upon

the express condition that said company shall construct, complete, and put in operation that part of its said railway above mentioned as soon as a railway shall be constructed and put in operation from the City of Hudson to said point of intersection, and within five years from its acceptance of said lands as herein provided, and shall also construct and put in operation the railway of said company from Genoa northerly at the rate of twenty miles per year."

The value of the lands thus granted was at the time of the wrongs hereinafter described, \$4,000,000.

By section 12, the company was required within sixty days to file with the Secretary of State an acceptance of the grant upon the terms and conditions named therein, and also such security for the construction of the road as should be required by the governor. Both of these conditions were complied with.

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Genoa, named in section 8, was the town on the southern boundary of the State of Wisconsin at which the line of the Chicago and Northern Pacific Air-Line Railway entered the state, and Hudson was the place on the St. Croix River, described in the acts of Congress as the initial point of the road to be aided.

On March 16, 1878, an act was passed by the Legislature of Wisconsin, Laws Wisconsin 1878, p. 442, c. 229, extending the time for the construction of the Portage Company's road three years.

In the panic of 1873-74, the Portage Company had broken down under a load of debts and embarrassments, and remained inactive until 1880. At that time, it secured the services of Willis Gaylord to assist in extricating it from its embarrassments and in continuing the construction of its road. William H. Schofield, an experienced railway projector and financier, was induced to accept the office of President, and the cooperation and assistance of the New York, New England and Western Investment Company (hereafter called the Investment Company) was secured.

A new mortgage for \$25,000 a mile and a new issue of stock were provided for. Seven hundred thousand dollars of the new bonds and one million of the new stock were to be issued in full satisfaction of all outstanding stock, bonds, and other demands. In pursuance of these arrangements, it issued certificates of stock for one million dollars in the name of A. A. Jackson, general solicitor of the Portage Company, which, endorsed by him in blank, were deposited with the Trust Company, and it also executed its orders to the number of ninety, calling for the delivery to John C. Barnes or bearer or a designated amount of said one million dollars of stock in ten percent installments. These orders were in the following form:

"To the Farmers' Loan and Trust Company:"

"This is to certify that, for value received, Mr. John C. Barnes or bearer is entitled to have and receive _____ shares of the capital stock of the Chicago, Portage and Superior Railway

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Company, which stock has been fully paid for and placed in your keeping as a special trust for delivery upon this order, and you are hereby authorized and directed to accept or certify in the usual manner this order for the delivery of said stock, and to deliver to the bearer hereof _____ shares of the said stock whenever and as often as any two hundred and fifty thousand dollars of the first mortgage bonds of the said railway company are sold or disposed of by said railway company or by its fiscal agent, or whenever and as often as any ten miles of the railroad of said railway company shall be built, as will be certified to by the president of said railway company, and in any event you are hereby directed to deliver to the bearer, on the first day of January, A.D. 1883, any of the said _____ shares of capital stock then remaining undelivered upon a surrender of this order therefor."

"Chicago, Portage and Superior"

"Railway Company"

"By _____, *President* "

"[On the margin:] This order for the delivery of the bonds and stock of this company held in special trust is hereby approved and accepted. The Farmers' Loan and Trust Company. [Seal]"

These orders were all delivered to John C. Barnes in exchange for and redemption of all the theretofore outstanding stock of the Portage Company, which stock was at once cancelled, with the exception of two certificates for \$25,000, which, by oversight or design on the part of Charles J. Barnes, vice-president of the Portage Company, remained in his custody uncanceled.

The situation after these arrangements were made was such that the entire outstanding stock was in the possession and control of C. J. Barnes, J. C. Barnes, and A. A. Jackson, yet held by them in trust for the company. The further stock provided for was to be issued from time to time to assist in the sale of the bonds until enough of the latter had been disposed of to construct the road. These arrangements having

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been perfected, the Portage Company, through its president, sought the alliance and support of the Grand Trunk Railway Company of Canada, which had recently completed an extension of its road to Chicago.

Three contracts were entered into of dates June 16, 1881, July 10, 1881, and September 30, 1881, by which the bonds of the company were to be disposed of, and money enough advanced for the construction of the road. The bill sets out fully the nature and scope of these contracts, and copies of them are attached as exhibits. It is unnecessary here to say more than that by them, taken in connection with the prior arrangements of the Portage Company, the latter obtained satisfactory assurances of abundant funds, and was placed in a position to fully perform its agreement with the state and construct the railroad by at least May 5, 1882 -- all this, of course, upon the condition of no outside and wrongful interference.

Relying upon the sufficiency of its arrangements for money, it on August 18, 1881, entered into a contract with Horatio G. Angle for the construction of about sixty-five miles of its railway, being that portion covered by the land grant heretofore referred to. By the terms of that contract, Angle was to receive \$8,500 per mile in cash and \$5,000 per mile in the full-paid stock of the company on condition that he completed the road on or before May 5, 1882. It also contracted for steel rails and fastenings to be delivered as the work of construction proceeded.

Angle commenced work, and had made such progress that on the 20th of January, 1882, he had sixteen hundred men employed along the line, and it was an assured fact that, unless interfered with, he would complete the railway according to the terms of the contract on or before May 5, 1882.

The bill further charges that about this time the Omaha Company conspired with other parties to wrest from the Portage Company its land grant, and to that end to prevent the completion of the contract by Angle and the construction of the road.

In the carrying out of this conspiracy the conspirators

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bribed Charles J. Barnes and A. A. Jackson, officers of the Portage Company, and who, either personally or as attorneys in fact for John C. Barnes, had the control of all the outstanding stock of the Portage Company, though holding it in trust for the benefit of the company, to betray their trust and transfer the stock to one L. J. Gage for the benefit of the Omaha Company.

Having thus secured the control of the stock, they caused notice thereof to be given to the officers of the Grand Trunk Railway Company. These gentlemen, finding that the control of the Portage Company was passing into the hands of hostile interests, surrendered the collateral which had been already transferred to them and declined to proceed further in the contracts which had been entered into.

Continuing the execution of this conspiracy, the Omaha Company notified the general manager of the Portage Company of the purchase of the outstanding

stock and advised and induced him to telegraph officially to the engineer in chief in charge of the work of construction, who had engaged in that work seven engineering corps, to forthwith call in these engineers, suspend their work, and pay them off. They also caused the general manager to notify the contractor, Angle, that the control of the company had been changed, and the English capitalists forced out, and also to telegraph to the merchants at Duluth and Superior City (who were furnishing supplies to the sixteen hundred men at work) that the company had been sold out, advising them to protect themselves, because the company could not pay or protect them.

In consequence of these notices, the several engineering corps were broken up, the engineers left the work, all the tools, materials, and other personal property belonging to the contractor and the company were attached at the suit of these merchant creditors, and the sixteen hundred laborers dispersed, and went elsewhere for work.

In further execution of this conspiracy, it endeavored to bribe the president and directors of the Portage Company and the Investment Company to turn over the organization of the Portage Company at once to them. Failing in this, it caused

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a bill to be filed in the Circuit Court for Cook county, Illinois, falsely charging the president and board of directors with incurring imprudent obligations, and otherwise thus impairing the value of the million and twenty-five thousand of stock, purchased as heretofore set forth, and praying for a temporary injunction, which, on February 11, 1882, was granted without hearing or notice, and restrained the president and other officers of the Portage Company from doing any act or thing whatsoever in the name or behalf of the company during the continuance of the injunction.

In still further execution of the conspiracy, the Omaha Company caused the fact of the abandonment of the work and the dispersion of the laborers engaged thereon to be promptly and widely published throughout Wisconsin, and especially among

the members of the legislature, then in session at Madison, concealing at the same time the means by which this had been accomplished.

Further, through its own agents, and especially through Jackson and Barnes, the corrupted officers of the Portage Company, it falsely represented to the legislature that no special progress had been made in the matter of constructing this road; that no considerable number of men had ever been at work, and that the Portage Company had finally abandoned it, and was wholly without means or credit to prosecute it.

On the strength of these representations, the legislature, without inquiry or hearing, on February 16, 1882, Laws Wisconsin 1882, p. 11, c. 9, hurriedly passed an act forfeiting and revoking the grant to the Portage Company and bestowing it upon the Omaha Company, which forfeiture and regranting were confirmed by an act passed March 5, 1883.

The contract with Angle having been thus broken by the Portage Company, he commenced an action at law against that company. While this action was pending, Angle died, but a revivor was had in the name of the present plaintiff, and on January 31, 1887, she recovered a judgment in the Circuit Court of the United States for the Western District of Wisconsin for \$205,803.19.

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Upon that judgment execution was issued and returned *nulla bona*, and thereupon this bill was filed to reach the land grant in the hands of the Omaha Company.

MR. JUSTICE BREWER, after stating the facts in the foregoing language, delivered the opinion of the Court.

That which attracts notice on even a casual reading of the bill -- the truth of all the allegations in which must be taken, upon this record, to be admitted by the demurrer -- is the fact that while Angle was actively engaged in executing a contract which he had with the Portage Company -- a contract whose execution

had proceeded so far that its successful completion within the time necessary to secure to the Portage Company its land grant was assured, and when neither he nor the Portage Company was moving or had any disposition to break that contract or stop the work -- through the direct and active efforts of the Omaha Company the performance of that contract was prevented, the profits which Angle would have received from a completion of the contract were lost to him, and the land grant to the Portage Company was wrested from it.

Surely it would seem that the recital of these facts would carry with it an assurance that there was some remedy which the law would give to Angle and the Portage Company for the losses they had sustained, and that such remedy would reach to the party, the Omaha Company, by whose acts these losses were caused.

That there were both wrong and loss is beyond doubt. And, as said by Croke, J., in *Baily v. Merrell*, 3 Bulst. 94, 95, "damage without fraud gives no cause of action, but where these two do concur and meet together, there an action lieth."

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The Portage Company held a land grant worth four millions of dollars. It had contracted for the construction of its road, such construction to be completed in time to perfect its title to the land. The contract had been so far executed that its full completion within the time prescribed was assured. The contractor had sixteen hundred men employed. The rails had been purchased. The company had lifted itself out of the embarrassments which years before had surrounded it. It had taken up all its old stock but \$25,000, which was ignorantly or wrongfully withheld by one of its officers. It had issued one million of new stock, had authorized a new issue of bonds, and had arranged for the cancelling of all its obligations with seven hundred thousand of these bonds and one million of stock. It had consummated arrangements with a wealthy company for the advancement of moneys sufficient for its work, and had gone so far as to place in the hands of that company one hundred thousand of its bonds, upon which \$50,000 in cash was to be advanced. Except through some wrongful interference, it was reasonably certain that everything would be carried out as thus planned and arranged.

At this time, the Omaha Company, which was a rival in some respects, and which had located a line parallel and contiguous to the line of the Portage Company, interferes, and interferes in a wrongful way. It bribes the trusted officers of the Portage Company to transfer the entire outstanding stock into its hands, or at least place it under its control. Being thus the only stockholder, it induces the general manager to withdraw the several engineering corps, whose presence was necessary for the successful carrying on of the work of constructing the road; to give such notice as to result in the seizure of all the tools and supplies of the contractor and the company, and the dispersion of all laborers employed. To prevent any action by the faithful officers of the Portage Company, it wrongfully obtains an injunction tying their hands. In the face of this changed condition of affairs, the company, which had negotiated with the Portage Company, and was ready to advance it money, surrendered the one hundred thousand of the bonds and abandoned the arrangement.

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By false representations to the legislature as to the facts of the case, it persuaded that body to revoke the grant to the Portage Company and bestow the lands upon itself.

That this was a wrongful interference on the part of the Omaha Company and that it resulted directly in loss to the contractor and to the Portage Company is apparent. It is not an answer to say that there was no certainty that the contractor would have completed his contract, and so earned these lands for the Portage Company. If such a defense were tolerated, it would always be an answer in case of any wrongful interference with the performance of a contract, for there is always that lack of certainty. It is enough that there should be, as there was here, a reasonable assurance, considering all the surroundings, that the contract would be performed in the manner and within the time stipulated, and so performed as to secure the land to the company.

It certainly does not lie in the mouth of a wrongdoer, in the face of such probabilities as attend this case, to say that perhaps the contract would not have

been completed even if no interference had been had, and that therefore, there being no certainty of the loss, there is no liability.

Neither can it be said that the Omaha Company had a right to contend for these lands; that it simply made an effort, which any one might make, to obtain the benefit of this land grant. No rights of this kind, whatever may be their extent, justify such wrongs as were perpetrated by the Omaha Company. Here, bribery was resorted to to induce the trusted officers of the Portage Company to betray their trust and to place at least the apparent ownership of the stock in the hands of the rival company.

Without notice, without hearing, and by false allegations, it secured an injunction to stay the hands of the honest officers of the Portage Company. Such wrongful use of the powers and processes of the court cannot be recognized as among the legitimate means of contest and competition. It burdens the whole conduct of the Omaha Company with the curse of wrongdoing, and makes its interference with the affairs of the Portage Company a wrongful interference.

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Further, by false representations as to what the Portage Company has done and intends to do, it induced the legislature of the state to revoke the grant to the Portage Company and bestow it upon itself. The result, and the natural result, of these wrongful actions on the part of the Omaha Company was the breaking down of the Portage Company, the disabling it from securing the means of carrying on this work, the dispersion of the laborers, and the prevention of the contractor from completing his contract. It will not do to say that the contractor was not bound to quit the work, but might have gone on and completed his contract, and thus earned the lands for the Portage Company; nor that the wrongful act of the trusted officers of the Portage Company in betraying their trust could have been corrected by the Portage Company by appropriate suit in the courts; that the law in one shape or another would have offered redress to the Portage Company for all the wrongs that were attempted and done by the Omaha Company. Granting all of

this, yet the fact remains that the natural, the intended, result of these wrongful acts was the breaking down of the Portage Company, the unwillingness of the foreign company to furnish it with money, and the prevention of the contractor from completing his contract.

It is not enough to say that other remedies might have existed and been resorted to by the Portage Company, and that notwithstanding, the hands of its officers were tied by this wrongful injunction. It is enough that the Portage Company did break down, that it broke down in consequence of these wrongful acts of the Omaha Company, and that they were resorted to by the latter with the intention of breaking it down.

It has been repeatedly held that if one maliciously interferes in a contract between two parties and induces one of them to break that contract to the injury of the other, the party injured can maintain an action against the wrongdoer. *Green v. Button*, 2 Cr.Mees. & R. 707, in which the defendant, by falsely pretending to one party to a contract that he had a lien upon certain property, prevented such party from delivering it to the plaintiff, the other party to the contract, and was

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held responsible for the loss occasioned thereby. *Lumley v. Gye*, 2 El. and Bl. 216, in which a singer had entered into a contract to sing only at the theater of the plaintiff, and the defendant maliciously induced her to break that contract, and was held liable to the damages sustained by the plaintiff in consequence thereof. ~*Bowen v. Hall*,~ 6 Q.B.D. 333, in which it was held that an action lies against a third person who maliciously induces another to break his contract of exclusive personal service with an employer, which thereby would naturally cause, and did in fact cause, an injury to such employer. In the opinion of Brett, L.J. it was said

"that wherever a man does an act which in law and in fact is a wrongful act, and such an act as may, as a natural and probable consequence of it, produce injury to another, and which in the particular case does produce such an injury, an action on the case will lie. This is the proposition to be deduced from the case of *Ashby*

v. White. If these conditions are satisfied, the action does not the less lie because the natural and probable consequence of the act complained of is an act done by a third person, or because such act so done by the third person is a breach of duty or contract by him, or an act illegal on his part, or an act otherwise imposing an actionable liability on him."

Walker v. Cronin, 107 Mass. 555, in which a manufacturer was held entitled to maintain an action against a third party who, with the unlawful purpose of preventing him from carrying on his business, willfully induced many of his employees to leave his employment, whereby the manufacturer lost their services and the profits and advantages which he would have derived therefrom. *Benton v. Pratt*, 2 Wend. 385. *Rice v. Manley*, 66 N.Y. 82, in which a party had contracted to sell and deliver to plaintiffs a quantity of cheese, but, having been made to believe through the fraud of the defendant that the plaintiffs did not want the cheese, sold and delivered it to him, and it was held that an action could be maintained against the defendant for the damages which the plaintiffs sustained from failing to get the cheese. *Jones v. Stanly*, 76 N.C. 355, in which the court said:

"It was decided in *Haskins v. Royster*, 70 N.C. 601, that if a person

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maliciously entices laborers or croppers to break their contracts with their employer, and desert his service, the employer may recover damages against such person. The same reasons cover every case where one person maliciously persuades another to break *any* contract with a third person. It is not confined to contracts for service."

Under these authorities, if the Omaha Company had, by its wrongful conduct, simply induced the Portage Company to break its contract with Angle, it would have been liable to him for the damages sustained thereby. *A fortiori*, when it not only induces a breach of the contract by the Portage Company, but also disables it from performance.

But there is still another aspect in which these transactions may be regarded. The Omaha Company became by its wrongful acts the sole stockholder in the Portage Company. It matters not that it might have been dispossessed of this position by appropriate action in the courts. It was, for the time at least, the sole stockholder. As such sole stockholder, it took advantage of its position and its powers to strip the Portage Company of its property and secure its transfer to itself.

Now what rights, if any, a corporation may have against a sole stockholder who wrongfully causes the transfer of all the property of the corporation to be made to himself need not be inquired into. It is clear that this stockholder cannot secure this transfer from the corporation to itself of the property of the latter so as to deprive a creditor of the corporation of the payment of his debt.

To put it in another way: the Portage Company, a corporation, owed Angle \$200,000. It had property with which that debt could be paid. The Omaha Company became the sole stockholder in the Portage Company. As such sole stockholder, it used its powers to transfer the property of the Portage Company to itself, and its conduct all the way through was marked by wrongdoing.

Whatever the Portage Company might do, Angle may rightfully hold the sole stockholder responsible for that payment, which the corporation would have made but for the wrongful acts of such stockholder.

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But the stress of the defendant's contention is not that the bill fails to state a case of wrong for which, generally speaking, the law would give a remedy, but that the action of the legislature of the state in revoking the land grant to the Portage Company and donating it to the Omaha Company is conclusive upon the courts, and prevents any recovery, and secondly that although actionable wrong on the part of the defendant may be disclosed by the bill, the only remedy which the plaintiff has therefor is an action at law for damages, and no grounds are shown for the interposition of a court of equity.

With respect to the first of these matters, it is insisted that the Portage Company was in default at the very time that these wrongs on the part of the Omaha Company were charged to have been committed and the act of forfeiture was passed. By section 8 (the granting section) of the Act of March 4, 1874, it was provided:

"This grant is made upon the express condition that said company shall construct, complete, and put in operation that part of its said railway above mentioned, as soon as a railway shall be constructed and put in operation from the City of Hudson to said point of intersection, and within five years from its acceptance of said lands as herein provided, and shall also construct and put in operation the railway of said company from Genoa northerly at the rate of twenty miles per year."

The Act of March 16, 1878, reads that "the time limited for the construction of the railway . . . is hereby extended three years." It is said that this act in effect merely struck out the word "five" in the clause quoted, and substituted therefor the word "eight," leaving the other conditions of the grant unchanged. It is not claimed in the bill that the Portage Company had ever constructed any part of its road from Genoa northward, or that a railway had not been constructed and put in operation from the City of Hudson to the point of intersection, and therefore it is urged that it is not shown that the Portage Company was not in default, or that the legislature had not the absolute right to forfeit, as it did, by the act of February 16, 1882. It is contended, on the other hand, by the plaintiff, that the extension

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was an absolute extension of three years from May 5, 1879, irrespective of the other two conditions in the original grant, and gave to the Portage Company an interest in the land grant which the legislature had no power to take away before May 5, 1882. It is further insisted by the defendant that even if this claim of the plaintiff be sustained, the Act of March 5, 1883, confirming the revocation and resumption of the land grant to the Portage Company and the regranting of the same to the Omaha Company, was after the expiration of the full limit of extended

time as thus claimed by the plaintiff, and that then the Portage Company had unquestionably failed to earn the grant, and had lost all right to the land. Hence it is said that there was, in whatever aspect the matter may be looked at, a valid resumption by the state of the grant which it had made conditionally to the Portage Company and a regrant of the lands to the Omaha Company, that the act of the legislature cannot be questioned, that full knowledge of all the situation must be presumed, and that no inquiry is permissible as to the motives which actuated the legislature, it being presumed that everything which it did it did rightly.

In this respect, the case of [Fletcher v. Peck](#), 6 Cranch 87, is relied upon. In that case, a purchase of a large body of lands was made by James Gunn and others in the year 1795 from the State of Georgia, the contract for which was made in the form of a bill passed by the legislature. The title to some of these lands thus acquired passed by conveyances to Peck, who conveyed them to Fletcher. An action was brought on certain covenants in that deed. The third covenant was that all the title which the State of Georgia ever had in the premises had been legally conveyed to Peck, the guarantor. The second count assigned

"as a breach of this covenant that the original grantees from the State of Georgia promised and assured divers members of the legislature, then sitting in General Assembly, that if the said members would assent to and vote for the passing of the act, and if the said bill should pass, such members should have a share of, and be interested in, all the lands purchased from the said

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state by virtue of such law, and that divers of the said members, to whom the said promises were made, were unduly influenced thereby, and, under such influence, did vote for the passing of the said bill; by reason whereof the said law was a nullity,"

etc., "and so the title of the State of Georgia did not pass to the said Peck." In respect to this matter, the Court, by Chief Justice Marshall, observed, among other things, as follows:

"This is not a bill brought by the State of Georgia to annul the contract, nor does it appear to the court by this count that the State of Georgia is dissatisfied with the sale that has been made. The case, as made out in the pleadings, is simply this: one individual, who holds lands in the State of Georgia, under a deed covenanting that the title of Georgia was in the grantor, brings an action of covenant upon this deed and assigns as a breach that some of the members of the legislature were induced to vote in favor of the law, which constituted the contract, by being promised an interest in it, and that therefore the act is a mere nullity."

"This solemn question cannot be brought thus collaterally and incidentally before the Court. It would be indecent in the extreme, upon a private contract between two individuals, to enter into an inquiry respecting the corruption of the sovereign power of a state. If the title be plainly deduced from a legislative act, which the legislature might constitutionally pass if the act be clothed with all the requisite forms of a law, a court, sitting as a court of law, cannot sustain a suit brought by one individual against another founded on the allegation that the act is a nullity in consequence of the impure motives which influenced certain members of the legislature which passed the law."

The rule upon which this decision rests has been followed in many cases, and has become a settled rule of our jurisprudence. The rule, briefly stated, is that whenever an act of the legislature is challenged in court, the inquiry is limited to the question of power, and does not extend to the matter of expediency, the motives of the legislators, or the reasons which were spread before them to induce the passage of the act.

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This principle rests upon the independence of the legislature as one of the coordinate departments of the government. It would not be seemly for either of the three departments to be instituting an inquiry as to whether another acted wisely, intelligently, or corruptly. Upon that rule, it is insisted that these two acts of the State of Wisconsin cannot be impeached; that whatever wrongs may in fact have been done by the Omaha to the Portage Company, the Legislature of Wisconsin,

in the exercise of its undoubted power, has taken away the lands from the Portage and given them to the Omaha Company, and, as its power is undoubted, no court can interfere or inquire as to why, or under the influence of what motives or information, those acts were passed, nor can any court decree, either directly or indirectly, that those lands, which were taken away from one company and given to the other, either legally or equitably, still remain the property of the first company, and subject to the payment of its debts.

But it must be remembered that the wrongs of the Omaha Company were done before the legislature passed either the act of 1882 or that of 1883, and it is to redress those wrongs that this suit was brought. Can it be that the legislature, by passing those acts, condoned the wrongs, and relieved the Omaha from any liability to the Portage Company? Did the resumption of the land grant and the regrant to the Omaha Company make lawful its acts in bribing the officers of the Portage Company? Did it relieve the Omaha Company from any liability for the wrongful use of the process of the courts in the injunction? Could it act judicially, and in effect decree that the wrongs done by the one company to the other created no cause of action? A right of action to recover damages for an injury is property, and has a legislature the power to destroy such property? An executive may pardon and thus relieve a wrongdoer from the punishment the public exacts for the wrong, but neither executive nor legislature can pardon a private wrong, or relieve the wrongdoer from civil liability to the individual he has wronged. The wrong was not one done by the state or in the act of the legislature in taking away the land grant, but in such proceedings

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on the part of the Omaha Company as put the Portage Company in a position which apparently called for the action of the legislature. There is no more challenge of the validity of this legislation by suing the Omaha Company for the wrongs it did leading up to this legislation than there is in challenging the validity of a criminal proceeding by an action against the prosecutor for malicious prosecution. It may be, as counsel claim, that the legislature is presumed to act with full knowledge of the situation; that it knew of the wrongs done by the Omaha

to the Portage Company; knew that those wrongs had disabled the Portage Company from proceeding with the work; knew that thereby a cause of action had arisen to the contractor, Angle, against the Portage Company, and also against the Omaha Company, and with all that knowledge in possession deliberately passed the statutes referred to, and yet it does not follow that its legislation was intended or was potent to relieve the Omaha Company from liability. There is in this suggestion no impugning the motives, the wisdom, or the power of the legislature. It acts as the guardian of the public interests, to which all private interests must yield, and it may well have thought that, notwithstanding the wrong that had been done by the Omaha Company, the fact was obvious that the Portage Company had become disabled, and could not go on with the work, and that in subserviency to such public interest it was necessary that the grant be taken away from the former and given to the latter company in order thus to expedite the construction. As the courts will not interfere with the action of the legislature, so it may rightfully be presumed that the legislature never intends to interfere with the action of the courts, or to assume judicial functions to itself. It may be presumed to have left to the courts the redress of the private wrongs done by the Omaha Company. In other words, it may have acted upon considerations like these: public interest requires the speedy building of this road. The Portage Company cannot build it. The Omaha Company can, if aided by this grant. Therefore the public interests demand a taking away of the grant from the one company and giving it to the

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other. If the disabled condition of the Portage Company has been brought about by the wrongs of the Omaha Company, the courts are open, and the accepted maxim in those tribunals is that where there is a wrong, there is a remedy. It thus subserves the interests of the public, and leaves the redress of the wrong to that department which has not only the requisite jurisdiction, but also the appropriate machinery, for ascertaining the amount of the injury and enforcing the due compensation.

Look at this from the opposite standpoint. When this matter was brought to the attention of the legislature, and its action invoked, was it confronted with only these alternatives? Must it, even if it could, as a condition of subserving the public interests, condone the private wrong done by the one company to the other, or must it let the public interests be neglected until such time as the question of private wrong has been determined, or must it, without the possession of the suitable machinery for investigation, arbitrarily determine -- as a condition of this transfer in subservience to public interests -- the measure of injury done by the one company to the other and the amount and character of the compensation to be rendered? Large and unnecessary stress would be laid upon the legislature if the question of public interest was always to be thus hampered by suggestions of injury and compensation between private individuals. While if there be no such stress, abundant freedom of action is open to the legislature, the distinction between the separate functions of the coordinate departments of the government is preserved, and at the same time public interest and private justice may be secured. The legislature may proceed with sole regard in all its actions to the public interests, with the assurance that all questions of wrong and loss between individuals will be settled in the judicial department and that its own action in subserviency to the public interest will bar no redress of a private wrong unless such bar be absolutely necessary to the accomplishment of the public interest.

But it is said that to permit this suit to be maintained and to subject these lands in the possession of the Omaha Company

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to the satisfaction of the judgment against the Portage Company is *pro tanto* to nullify the action of the legislature; that in taking the lands away from the one company and giving them to the other, it intended that the transfer should be absolute, without limitation, and subject to no contingencies or burdens. But it affirmatively expressed no such intention; it simply made the transfer, leaving the property subject to all the burdens and contingencies which might arise in the ordinary course of law. Suppose at the time of this transfer from the one company to the state, and from the state to the other company, there was an existing

judgment in favor of the Portage against the Omaha Company -- would it be for a moment contended that there was anything in the transfer which prevented the Portage Company from satisfying its judgment by a seizure and sale of the lands thus transferred to the Omaha Company? Unless there were in the words of the grant to the Omaha Company something which expressly tied up that land, it passed to the company subject to seizure and sale in satisfaction of any of its past or future obligations.

Even if it be conceded that under a true construction of the grant, taken in connection with the act extending the time for three years, the Portage Company was in default on February 16, 1882, and the legislature had then the absolute right to forfeit the grant, such concession would be no answer to the cause of action set out in the bill. For who can say that the legislature would have exercised that right of forfeiture? The mere fact that the Portage Company could not enforce at the time a legal right to the lands as against the state does not absolve the Omaha Company from liability for those wrongs which resulted in putting the Portage Company in a condition naturally calling for legislative action in furtherance of the public interest. If nothing of the kind had been done by the Omaha Company, and the Portage Company was, as it is stated, proceeding diligently in the work, with reasonable assurance that it would be completed within three or four months, it is fair to presume that the legislature would not have disturbed the grant, but would have permitted the Portage Company to fully earn that which it had already partially

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earned. The selection of the Portage Company in the first instance was, of course, made by the legislature in good faith, and the time was extended with the intent that the Portage Company should do the work and have the grant; and if the legislature saw that the company was doing the work, and would have it promptly completed, respect for the good faith of the legislature compels the conclusion that, but for the untoward circumstances precipitated upon the Portage Company by the wrongful acts of the Omaha Company, the act of February 16, 1882, would never have been passed. Assuredly it does not lie in the power of the wrongdoer --

the party whose wrongs created that condition which induced the legislative forfeiture -- to excuse its wrongs on the grounds that the legislature had the power to forfeit, and might have done it anyway. The cases of *Benton v. Pratt*, 2 Wend. 385, and *Rice v. Manley*, 66 N.Y. 82, are suggestive upon this question. In the former of these cases, it appeared that certain parties had contracted with the plaintiff to purchase of him twenty hogs, to be delivered at a future day, nothing having been done to make the contract binding under the statute of frauds. While the plaintiff was driving his hogs and preparing to fulfill his contract, the defendants, knowing the facts, fraudulently represented that he did not intend to deliver them, and thus induced those third parties to buy their hogs, and when the plaintiff arrived with his, they refused to take them simply because they had already a full supply. The point was made that the plaintiff could not recover, because there was no binding contract between him and the third parties; but the point was overruled, the court saying:

"It was not material whether the contract of the plaintiff with Seagraves and Wilson was binding upon them or not -- the evidence established beyond all question that they would have fulfilled it but for the false and fraudulent representations of the defendants."

And in the latter case, the plaintiffs had made an agreement with one Stebbins to purchase from him a quantity of cheese, to be delivered at a future day, and that contract, too, was not binding by reason of the statute of frauds. The defendant, knowing of this, fraudulently, by means of a fictitious telegram,

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persuaded Stebbins that the plaintiffs did not want the cheese, and would not take it, and thus himself secured a purchase of it. Here too, it was objected, in defense to an action against him for the damages caused by a failure on the part of the plaintiffs to obtain the cheese from Stebbins, that there was no contract which could be enforced against Stebbins for the sale and delivery of the cheese; but the court overruled the objection, saying:

"Plaintiffs' actual damage is certainly as great as it would have been if Stebbins had been obliged to perform his contract of sale, and greater, for the reason that they cannot indemnify themselves for their loss by a suit against Stebbins to recover damages for a breach of the contract. Suppose a testator designed to give A. a legacy, and was prevented from doing it solely by the fraud of B.; in such case, while A. has no right to the legacy which he can enforce against the estate of the testator, yet both law and equity will furnish him appropriate relief against B., depending upon the facts of the case. Kerr on Frauds 274, and cases cited; Bac.Ab. Fraud, B. Suppose A. made a parol contract with B. for the purchase of land, and B. is ready and willing to convey, but is prevented from so doing by the fraudulent representations of C. as to A. by which B. is deceived, and induced to convey to C.; in such case, although A. could not have compelled B. to give him the conveyance, it would be a reproach to the law to hold that C. would not be liable to A. for the damage caused by the fraud."

The same line of thought applies to the case before us. While it cannot be affirmed with certainty that the legislature would not have passed the act of forfeiture, yet it is reasonable to presume that it would not, and that its act was induced by the situation of the Portage Company, which situation was brought about by the wrongful acts of the Omaha Company.

Our conclusions in respect to this matter may be summed up thus: the Portage Company would have completed the work but for the wrongful acts of the Omaha Company. In consequence of the disability thus caused, and also moved by the false representations of the Omaha Company, the legislature resumed its grant, and made a regrant to the Omaha

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Company. The validity of that act is conceded. It is to be presumed the legislature acted with proper regard to the public interests, and without any improper motives or inducements. Conceding all this, it is equally to be presumed that it left the redress of private wrongs to the judicial department. It attached no conditions to the grant to the Omaha Company which would prevent the appropriation of those

lands to the satisfaction of any claims against that company. And hence to hold the Omaha Company as trustee for the creditors of the Portage Company in respect to these lands neither impeaches the validity of the action of the legislature nor casts any imputation upon its knowledge or motives. It may also be noticed that the purpose of this grant from Congress in the first place, and from the state to the companies in the second place, was to aid in the construction of the railroad. That purpose having already been accomplished, there is no thwarting public policy or the purposes of the grant if the lands granted shall now be appropriated, through the processes of the courts, to the satisfaction of any claims against the Omaha Company.

Passing now to the other of the two objections, it may be conceded that an action at law would lie for the damages sustained by the Portage Company through the wrongful acts of the Omaha Company. Indeed, that is a fact which underlies this whole case. Yet, while an action at law would lie, it does not follow that such remedy was either full or adequate. Waiving the question as to the solvency of the Omaha Company, and assuming that any judgment against it for damages could be fully satisfied by legal process, there remains the proposition that it is contrary to equity that the defendant should be permitted to enjoy unmolested that particular property the possession of which it sought to secure, and did in fact secure, by its wrongful acts. Ought the Portage Company to be compelled to experiment with the solvency of the Omaha Company before coming into a court of equity? While no express trust attached to the title to these lands, either in the Portage or in the Omaha Company, while it may be conceded that when the legislature resumed

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the grant, it took the title discharged of any express trust or liability in favor of the creditors of the Portage Company, and might have transferred an absolute title to any third party beyond the reach or pursuit of the Portage Company or its creditors, yet it is still true that the lands were given to the Portage Company, as they had been given by Congress to the state in the first instance, for the purpose of aiding in the construction of this road; that a part of the work necessary for such

construction had been done, and there is therefore an equity in securing, to the extent to which the work had been done, the application of these lands in payment thereof. And when the Omaha Company, by its wrongdoings, secured the full legal title to those lands, equity will hold that the party who has been deprived of payment for his work from the Portage Company by reason of their having been taken away from it shall be able to pursue those lands into the hands of the wrongdoer, and hold them for the payment of that claim which, but for the wrongdoings of the Omaha Company, would have been paid by the Portage Company, partially at least, out of their proceeds. While no express trust is affirmed as to the lands, yet it is familiar doctrine that a party who acquires title to property wrongfully may be adjudged a trustee *ex maleficio* in respect to that property.

In Pomeroy's Eq.Jur. 155, the author says, citing many cases:

"If one party obtains the legal title to property not only by fraud or by violation of confidence or of fiduciary relations, but in any other unconscientious manner, so that he cannot equitably retain the property which really belongs to another, equity carries out its theory of a double ownership, equitable and legal, by impressing a constructive trust upon the property in favor of the one who is in good conscience entitled to it, and who is considered in equity as the beneficial owner."

And again, in section 1053:

"In general, whenever the legal title to property, real or personal, has been obtained through actual fraud, misrepresentations, concealments, or through undue influence, duress, taking advantage of one's weakness or necessities, or through any other similar means or

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under any other similar circumstances which render it unconscientious for the holder of the legal title to retain and enjoy the beneficial interest, equity impresses a constructive trust on the property thus acquired in favor of the one who is truly and equitably entitled to the same, although he may never perhaps have had any

legal estate therein, and a court of equity has jurisdiction to reach the property, either in the hands of the original wrongdoer or in the hands of any subsequent holder, until a purchaser of it in good faith and without notice acquires a higher right, and takes the property relieved from the trust. The forms and varieties of these trusts, which are termed 'ex maleficio or 'ex delicto,' are practically without limit. The principle is applied wherever it is necessary for the obtaining of complete justice, although the law may also give the remedy of damages against the wrongdoer."

These authorities are ample to sustain this suit. The property was in the Portage Company for the purpose of aiding in the construction of this road. Work was done by the plaintiff in that direction. Equity recognizes a right that that property should be applied in the payment for that work. The wrongdoing of the defendant, the Omaha Company, has wrested the title to this property from the Portage Company, and transferred it to itself. It has become, therefore, a trustee *ex maleficio* in respect to the property. It follows from these considerations that the court erred in sustaining the demurrer to this bill, and the decree of dismissal must be

Reversed, and the case remanded with instructions to overrule the demurrer, and for further proceedings in conformity to law.

MR. JUSTICE HARLAN dissents from the opinion and judgment for the reasons stated by him at the circuit in *Angle v. Chicago, St. Paul, Minneapolis & Omaha Railway Co.*, 39 F. 912, and *Farmers' Loan & Trust Co. v. Chicago, St. Paul, Minneapolis & Omaha Railway*, 39 F. 143.