1905. 19 Southampton County Chancery - Seaboard Air Line R.R. Vs Dardens, James R et als

(2 combined cases)

To enjoin and restrain defendants from advertising sale of Railroad property

Drake, L. J. (Justice of Peace)
Blow, W. R. (Constable)
Porter - B. L.

Seaboard Air Line Ry.

v. Bill of Exhibits

Jas R. Darden et als.

1902. 8th Feby. Lodged in Office

L. A. Hay Clk

Mr Lemmon v Bennett Pltf

To the Honorable R. R. Prentis, Judge of the Circuit Court of Southampton County,

Humbly complaining Seaboard Air Line Railway Company, a corporation existing under and by virtue of the laws of the State of Virginia, respectfully represents that James R. Darden, of Newsoms, in the County of Southampton, State of Virginia, through which County said Complainants are operating a railway line and doing a general railway business, sued out on the 9th day of January, 1902, a warrant against your orator, directed to any constable of the County aforesaid, for the sum of eight dollars ($8.00), citing your orator to appear at Newsoms, Virginia, on the 25th day of January, 1902; and upon the back of the warrant is the following language;" Execute by deliverdng copy of the within warrant to C. L Rawles, their agent at Newsoms, Virginia, January 9, 1902/ W. R. Blow Constable."all of which will more fully appear by copy of said warrant filed herewith as "Exhibit A".

That ~~so far~~ as your orators are advised a judgment was granted on the said 25th day of January, 1902, against your orators, or Seaboard Air Line Railway Company, for the amount of said warrant and costs, and an execution then and there issued directed to said Constable, by L. J. Drake ~~Constable~~ a justice commanding him to make the amount of said judgment with cost and interest; that in pursuance of said execution the property of the Seaboard Air Line Railway Company, to-wit, one iron safe, located in your orators' office at Newsoms, ~~and~~ was levied upon and has advertised the same for sale at public auction, sale to be had on the 8th day of Febr uary, 1902, which will also appear by reference to said notice of sale filed herewith and marked "Exhibit B".

Your orators are advised and believe that the warrant aforesaid, and ~~by~~ the proceedings had subsequent to its issue, are void, and the entire proceedings are without authority of law and should be set aside and declared null and void, for the reasons following; First, There is no legal service of the

said warrant upon your orator as required by the statute in cases effecting corporations, as defendants. Second, that the said plaintiff at the time of the suing out of the said warrant had several claims against your orator which he was, and still is, holding back and declining to sue on, for the avowed purpose of depriving your orator of the right to appeal, and to defraud the County Court of its rightful and lawful jurisdiction. In support of this statement your orator has filed herewith as a part of this bill, the affidavits of R. Howard, and E. R. Darden, marked "C" which he prays may be read as a part of this bill.

Your orator further represent that unless an injunction is issued enjoining and restraining the said W. R. Blow, Constable, from proceeding to sell the property of your orator under the supposed authority of the judgment aforesaid, that irreparable injury will result to your complainant.

In tender consideration whereof and as much as your orator is remediless in the premises, save by the aid of the Court of Equity where matters of this kind are alone and properly cognizable, to the end that justice may be done, it prays that James R. Darden, J.P. Dyas Justice and W. R. Blow, Constable may be made parties defendant to this bill and required to answer the same, but answers under oath are expressly waived, that an injunction may issue enjoining and restraining the said James R. Darden and W. R. Blow, Constable, their agents and employees, and all other persons, from selling or in any way interfering with the property of your orator by reason of, or under supposed authority of the aforesaid warrant and execution above described, that said injunction may be made perpetual, and that the said James R. Darden may be required to combine his various causes of action, or supposed causes of action, into one suit, that the right of your orator to appeal from the judgment of the court may not be abridged or taken from it by the unlawful method adopted by this defendant.

That all such other, further, general and special relief may be granted to your orator as the nature of his case

may require or to equity shall seem meet, and it will ever pray.

May it please the Court and Etc.

M Lemore Herbitt.
Counsel for Complainant.

State of Virginia, ~~City of Portsmouth~~ County of Nansemond, To-wit:

This day James L. McLemore
S.M. Lawrence personally appeared
before me, ~~John M. Perkins~~, a Notary Public, for the County
aforesaid, in the State of Virginia, and made oath that the
statements contained in the foregoing bill of complaint,
in so far as made from his own knowledge are true, and in so far as made
from information derived from others, he believes them to be
true.

Given under my hand this 8th day of February, 1902.

S.M. Lawrence N.P.

STATE OF VIRGINIA, [illegible] County, to-Wit:

In the Circuit Court of Nansemond County, In Vacation, February 8th. 1902.

Seaboard Air Line Railway Company, Complainant,

Against,

James R. Darden, et als. Defendants,

On motion of the complainant, an Injunction is granted it in accordance with the prayers of this bill, restraining the defendants James R. Darden and W.R. Blow, Constable from further proceeding with the execution issued by L.J. Drake Justice of the peace, upon the judgment obtained against the Complainant, Seaboard Air Line Railway Company, on January 25, 1902; and the said W.R. Blow, constable as aforesaid is enjoined and restrained from selling or attempting to sell under his said execution, the property, by him levied upon, and advertised for sale, as setforth in complainants bill, ~~and he is required to restore the property so levied upon, to the custody of the complainant.~~ until the further order of the Court.

But before this injunction shall take effect, the said Complainant or ~~some~~ one for it, shall enter into bond, with good security, before the Clerk of the Circuit Court of Southampton County, in the penalty of $75.00, conditioned to pay the judgment, proceedings on which are thus enjoined, and all such costs ~~and damages~~ and damages as may be awarded against it, in case this injunction shall be dissolved.

To the clerk of the Circuit Court of Southampton County.

Robt R. Willis

Pltf's Atty

E J Vaughan

Subscribed and swore to before me this 1 day of Febr, 1902.

L J Drake J.P.

STATE OF VIRGINIA, Southampton **County, to-wit:**

SUMMON Seaboard Air Line Railway *to appear before me, or some other Justice of the Peace for this County, at* Newsoms Va *on the* 25 *day of* Jan 1902 ~~189~~ at 12 oclock, *to answer the complaint of* Jas. R. Darden *of a plea of debt, for the non-payment of* Eight *Dollars* 00 *Cents, with interest, said to be due by* acct *and then there make due return of this warrant.*

Given under my hand this 9th *day of* Jany 1902 ~~189~~

Copy (Signed) L J Drake

To any Constable of the County aforesaid. *J. P.*

Judgment *is granted the* plaintiff *for the sum of* Eight *Dollars* 00 *Cents, with interest from the* 25th *day of* Jany 1902 ~~189~~, *till paid, and* $1.00 *Costs.*

Given under my hand this 25 *day of* Jany 1902 ~~189~~

Copy (Signed) L J Drake *J. P.*

STATE OF VIRGINIA, Southampton **County, to-wit:**

I COMMAND YOU, that of the goods and chattels of Seaboard Air Line Railway Co *you cause to be made the sum of* Eight *Dollars* 00 *Cents, with interest from the* 25th *day of* Jany 1902 ~~189~~, *till paid, and* $1.00 *Costs, which recovered before me,* L J Drake, *a Justice of the Peace for the County aforesaid; and that you render to the said* Jas R Darden *the debt aforesaid, and make due return thereof within sixty days.*

Given under my hand this 25th *day of* Jany 1902 ~~189~~

To any Constable of the County aforesaid. (Signed) L J Drake *J. P.*

Copy

L J Darden

Subscribed and sworn to before me this 1st **day of** Febr, **1902.**

L J Drake J.P.

"B"

Notice

I will sell at Newsom Ga on Saturday Feb 8 1902 at 2 o'clock P.M. 1 Iron Safe the property of S.A.L. levied on to satisfy Judgement V. Executions in my hands

W.R. Blow
Const

January 28th 1902

Copy

"C"

I, R. Howard, hereby make oath and say, that on Saturday 25th. of January, 1902, at Newsoms, Virginia, immediately after the trial of the case of James R. Darden against Seaboard Air Line Ry., heard the said James R. Darden, the plaintiff in the case aforesaid, say that he had several other cases, for stock killed, against the Seaboard Air Line Ry. Co. which he had been holding off until this case was disposed of, and that he was going to bring warrants on each of said cases separately.

Given under my hand this 31st. day of January, 1902.

R Howard.

Subscribed and sworn to before me this 1 day of Febr, 1902.

L. J. Drake J.P.

I, E. T. Darden, hereby make oath and say, that on Saturday 25th. of January, 1902, at Newsoms, Virginia, immediately after the trial of the case of James R. Darden against Seaboard Air Line Ry., heard the said James R. Darden, Plaintiff in the case aforesaid, say that he had several other cases, for stock killed, against the Seaboard Air Line Ry. Co. which he had been holding off until this case was disposed of, and that he was going to bring warrants on each of the said cases separately.

Given under my hand this 31st. day of January, 1902.

E T Darden

Subscribed and sworn to before me this 1st day of Febr, 1902.

L. J. Drake J.P.

Seaboard Air Line Ry. Co.

vs. } Stat: of Rules

Dawson et als.

Seaboard Air Line Railway Company Plaintiff
vs.
Jas. R. Darden, T. J. Drake Justice
of the peace & W. R. Blow, Constable. Defendants
In chy.

1902. 8th February. Process issued to 2nd Feby. Rules
with injunction order endorsed
thereon. Bill lodged in Office.
Injunction awarded and
bond executed.

1902. 2nd February Rules. Process returned executed.
Bill & Exhibits filed.
Decree Nisi vs. Defendants

1902. 1st. March Rules.

Seaboard Air Line Ry. Co.

v. (Bill and Exhibits)

B.L.Porter & W.R.Blow, Constable.

Not used.

McLemore & Corbitt,
Attorneys at Law,
Suffolk, Va.

IN THE [redacted] COURT OF [redacted] COUNTY.

[redacted]
Seaboard Air Line Railway Company,
[redacted]
vs.
[redacted]
W. L. Porter and W. B. Shackelford,
[redacted]

Complaining shows unto the court your complainant, the Seaboard Air Line Railway Company, a corporation existing and doing business under the laws of the State of Virginia, that on the 26th. day of November, 1904, W. L. Porter, of the County of Northumberland, Virginia, sued out a warrant before T. A. Bishop, a Justice of the Peace, summoning the Seaboard & R.R. Road Company to appear at Heathsville, Virginia, on the 5th. day of December, 1904, to answer the complaint of W. L. Porter upon a claim for nine and 50/100 ($9.50) dollars which he claims was violated by reason of the killing of one dog of that value; that a copy of this warrant was delivered to the agent of the Seaboard Air Line Railway Company at Heathsville; that the said cause came on for trial, and a judgment was entered up against the Seaboard & R.R. Road Co. for the amount of the warrant, $9.50 and $1.05 costs on the 5th. day of December, 1904, there being no appearance on the part of the defendant; that in pursuance of said judgment, and execution following same directed to W. B. Shackelford, a Constable of said County, the said W. B. Shackelford, Constable, levied on and advertised for sale at Heathsville, Virginia, on December 27th.,1904, at eleven o'clock, A.M., one iron safe, the property, as your orator alleges, of the Seaboard Air Line Railway Company; that the claims of the aforesaid agent that he is selling this property for [redacted] in the suit against the S. A. L. R. R. Co., which [redacted] there is no such jud-

COURT OF CONSERVATION COUNTY.

TO THE HONORABLE ROBERT J. PHENIX, JUDGE OF THE CIRCUIT

sent, never has been with judgment, and no papers have been issued against said complainant in this behalf, all of which will appear by reference to copies of the warrant, judgment, execution and notice of sale filed herewith as exhibits "A", "B", "C" and "D", and prayed to be read as a part of this bill.

Your orator alleges and says, that the property upon which the said W. R. Kirk, Constable, has levied, and which he has advertised for public sale, is the property of the Seaboard Air Line Railway Company, and the Seaboard & R.R. Land Co., title to portions whereof, or interest in the same, and therefore the property of your complainant cannot be held responsible or liable for the judgment under which the said constable is acting, and your complainant believes that it is entitled to an injunction staying the said officer and all other persons who be restrained from interfering with their property, or attempting to carry said warrant vouched as authority for this levy and advertisement of sale.

Forasmuch, therefore, as your complainant is remediless in the premises, save by the aid of a court of equity where matters of this kind are always and properly cognizable, to the end, therefore, this justice may be done your complainant prays that R. L. Porter and W. R. Kirk, Constable, may be made parties defendants to this bill, and required to answer the same, but answer under oath are hereby expressly waived; that the said defendants, their agents, employees, and all other persons, may be enjoined and restrained from selling the said lien sale, or any other property of your complainant, levied on and advertised for sale under the supposed authority and execution of December 8th.,1904, issued by T. A. Bishop, Justice of the Peace, in the case of R. L. Porter v. Seaboard & R.R. Land Co. tried by him on December 8th.,1904; and that all such further general and special relief may be granted your orator as the nature of this case may require or to

equity shall seem meet. And your complainant will ever pray, etc.

W. Inmon & Corbitt. P.Q.

Seaboard Air Line Railway Company,

by _____

its _____.

STATE OF VIRGINIA,
CITY OF PORTSMOUTH, To-wit:

I, _____, a Notary Public for the city aforesaid, in the State of Virginia, do hereby certify that _____, _____ of the Seaboard Air Line Railway Company, whose name is signed to the above bill of complaint, personally appeared before me in my city aforesaid, and made oath that the statements contained therein, so far as made of his own knowledge, are true, and as to such as made upon information derived from others, he believed them to be true.

Given under my hand this ____ day of December, 1904.

_____,

Notary Public.

My commission expires ____ day of _____, 19__.

SEABOARD & ROANOKE RAILROAD COMPANY

vs.

B. L. PORTER & W. R. BLOW

--Brief of Complainants' Counsel--

The railroad company contends that no service of warrant was served on it and no judgment given against it.

In proceedings against Seaboard & Roanoke R. R. Road Co. a judgment was entered as follows: B. L. P. vs. S. & R.R.R. Co., see Exhibit "B" with bill of complaint, and upon this supposed judgment, an# execution was issued against the property of Seaboard & R. R. Road Co., and by W. R. Blow, Constable, levied on the property of complainant company, advertising same for sale to satisfy execution on, as he says, "judgment in my hands vs. S.A.L. R.R.Co.", see Exhibit "D" filed with complainant's bill.

We contend that the proceedings in so far as it purports to be a judgment against complainant company, is absolutely void, and that any attempt to subject its property by authority thereof is unwarranted in law.

The Seaboard & Roanoke Railroad Company has not been warranted or served with any notice of suit, nor has it or any one for it made any appearance before the Justice.

"When the rights and interest of a corporation are involved, they can be asserted and enforced by the corporation only in its corporate capacity and in its corporate name."

Stewart &. Palmer v. Thornton et als. 78 Va.,216;
Lyles Notes to Vol.1 Min.Int.,146.

I refrain from referring to other defects and irregularities in the proceedings, deeming the objection raised as fatal to defendant's case.

We submit that the attempt to sell complainants' property by virtue of the proceedings as set up in this cause, is clearly without authority, and the injunction should be perpetuated.

As counsel for defendant, in the answer to complainants' bill has referred to a letter written by complainants' counsel, we herewith submit carbon copy of said letter that the court may see that no appearance was made in this case, and that no recognition of the justice or right of the case was therein made.

Respectfully submitted,

Copy

Notice.

I will sell at Public auction at Hayndsom Va on Dec 22nd 1904 at 11 oclock one Ton Coke to satisfy a Judgement in my hands. V.S. C.N.L. & R.R. Co.

(signed) W.R. Blow. Constable.

Dec 12th 1904.

Exhibit "D"

Commonwealth of Virginia:

To W. R. Blow, Constable Southampton County:

YOU ARE HEREBY COMMANDED TO SUMMON Seaboard & R. R. Road Co. to appear before me, or some other Justice of the Peace for same county, at Handsom Va. on the 5 day of Dec, 1904, to answer the complaint of B. L. Porter for the non-payment of Nine Dollars and 50 Cents, due by acct for one Dog Killed. And make due return how you have executed this warrant.

Given under my hand and seal this 24 day of Nov, 1904

J. A. Bishop, J. P.

COUNTY OF Southampton, STATE OF VIRGINIA, TO WIT:

To W. R. Blow, *Constable of said County:*

I hereby command you, in the name of the Commonwealth of Virginia, to summon Seaboard & R. R. Road Co., if to be found in your district, to appear at Handsom Va., in said County on the 5 day of ~~Nov~~ Dec 1904, at 11 o'clock A. M., before me or such other Justice of the said County as may then be there to try this warrant, to answer the complaint of B. L. Porter upon a claim for money for the sum of Nine 50/100 Dollars due by acct for one Dog Killed And then and there make return of this warrant.

Given under my hand this 24 day of Nov 1904

J. A. Bishop, J. P.

B. L. P. vs S. & R. R. Co

In debt,

5 day of Dec, 1904

Judgment, that the plaintiff recover of the defendant Nine 50/100 dollars with interest from the 5 day of Dec, 1904, till paid, and one dollars for his costs.

J. A. Bishop, J. P.

COUNTY OF Southampton, STATE OF VIRGINIA, TO WIT:

To W. R. Blow, *Constable of said County:*

I COMMAND YOU, In the name of the Commonwealth of Virginia, that of the goods and chattels of Seaboard & R. R. Road Co. in your district, you cause to be made the sum of Nine 50/100 Dollars, with interest thereon from the 5 day of Dec, 1904, till paid, which B. L. Porter recovered before me in a warrant in debt, and also the sum of one 100 dollars, which were adjudged to the said B. L. Porter for his cost in prosecuting this said warrant, and make return of this writ within sixty days.

Given under my hand this 5 day of Dec 1904

J. A. Bishop, J. P.

COSTS	
Justice,	50 c
Constable,	50 c
Clerk,	
Witnesses,	
	$1.00

"A"

"B"

"C"

S. & R. R. Co

v } Bill & Exhibits -

Porter & Blair

1904 Dec 22. Filed

B. F. McLemore

July 1904

Approved as to form:
General Counsel.

TO THE HONORABLE ROBERT R. PRENTIS, JUDGE OF THE CIRCUIT COURT OF THE COUNTY OF SOUTHAMPTON.

Seaboard & Roanoke Railroad Company, a corporation,

v.

B. L. Porter and W. R. Blow, Constable.

Complaining sheweth unto the court your complainant, Seaboard & Roanoke Railroad Company, a Corporation, that on the 26th. day of November, 1904, B. L. Porter of the County of Southampton, Virginia, sued out before T. A. Bishop, a Justice of the Peace for the said county, a warrant against the Seaboard & R. R. Road Co. summoning it to appear at Hamdsome, Virginia, on the 8th. day of December, 1904, to answer the complaint of B. L. Porter upon a claim for nine and 50/100 ($9.50) dollars which it was alleged was for damages sustained by reason of a dog killed by one of the company's locomotives or trains; that there is no such corporation known to your orator as the Seaboard & R. R. Road Company, but upon a warrant so issued, and without any service on your orator, a judgment was granted by the said T. A. Bishop on the 8th. day of December, 1904, for $9.50 and $1.00 costs, against the Seaboard & R. R. Road Co., and following same an execution was issued directed to W. R. Blow, Constable for said County, requiring him to levy on and sell the property of the Seaboard & R. R. Road Co. to satisfy said judgment; that in pursuance of said execution the said W. R. Blow, Constable, levied on a certain iron safe in the office of the railroad company at Hamdsome, Virginia, the property of your orator, and by a notice, a copy of which is herewith filed as

exhibit "D", he advertised to sell the said iron safe on December 23rd.,1904, at eleven o'clock, to satisfy the judgment in his hands against the S.A.L. R.R.Co., all of which will appear by reference to copies of said warrant, judgment, execution and notice filed herewith as exhibits "A", "B", "C" and "D", and prayed to be read as a part of this bill.

Your complainant respectfully states that it has no agent in the county of Southampton, nor does any of its officers or directors reside therein, and that no process or warrant was served upon your complainant, nor has it had any legal notice that a warrant was sworn out against it or that judgment had been granted against it. It also states that it does not operate any trains or cars in the county of Southampton, and therefore could not have been liable as is set forth in the said B. L. Porter's warrant or complaint, but notwithstanding these conditions, a judgment has been entered and the property of the company is now advertised for sale.

Your complainant also respectfully represents that the said B. L. Porter was not in any event or under any conditions entitled to recover for the killing of the dog as alleged in his warrant, for the reason that the same had not been listed for taxation as required by Section 420a of the Code of Virginia, edition 1904, and therefore, is not personal property, all of which will appear by a certain abstract from the property books of the county of Southampton filed as exhibit "E" as a part of this bill.

In tender consideration whereof, and forasmuch as your complainant is remediless in the premises save by the aid of a court of equity where matters of this kind are alone and properly cognizable, to the end therefore that justice may be done, your complainant prays that B. L. Porter and W. R. Blow, Constable, may be made parties defendants to this bill, and

required to answer the same, but answers under oath are hereby expressly waived; that the said defendants, their agents, employees and all other persons may be enjoined and restrained from selling the said property or any other property of your complainant levied on and advertised for sale under the supposed authority and execution of December, 8th.,1904, issued by T. A. Bishop, Justice of the Peace, in the case of B. L. Porter v. Seaboard & R. R. Road Co. tried by him on December 8th.,1904; that all such other further and general relief may be granted your orator as the matter of this case may require or to equity shall seem meet. And your complainant will ever pray, etc.

McSmore & Corbett
P.Q.

Seaboard & Roanoke Railroad Co., a Corporation.
by Robt L Nute
its Asst Treas

STATE OF VIRGINIA,
To-wit:
CITY OF PORTSMOUTH.

I, Thos L Boatwright, a Notary Public for the city aforesaid, in the State of Virginia, do hereby certify that Robt L Nute, Asst Treasurer of the Seaboard & Roanoke Railroad Company, whose name is signed to the above Bill of complaint, personally appeared before me in my city aforesaid, and made oath that the statements contained therein, so far as made of his own knowledge are true, and so far as made upon information derived from others, he believes them to be true.

Given under my hand this 20th day of December, 1904.

My commission expires 19 day of February, 1908.

Thos L Boatwright.
Notary Public.

I hereby certify that this is a name in which, by the laws of Virginia, no seal is required upon the seal.
Thos L Boatwright
Notary Public.

VIRGINIA, IN VACATION, IN THE CIRCUIT COURT OF SOUTHAMPTON COUNTY, December 21st.,1904.

Seaboard & Roanoke Railroad Company, a Corporation,

v.

B. L. Porter and W. R. Blow, Constable.

On motion of the complainant, by its counsel, an injunction is awarded it in accordance with the prayers of the bill, enjoining and restraining B. L. Porter and W. R. Blow, Constable, their agents, employees and all other persons, from selling or otherwise interfering with one certain iron safe in the office of the complainant at Hendsems, Virginia, or any other property of the complainant, under authority of the warrant of November 26th.,1904, issued by T. A. Bishop, J.P., in favor of B. L. Porter for Nine and 50/100 ($9.50) dollars on account of one dog killed, until the further order of this court.

But before the said complainant shall have the benefit of this order, it, or some one for it, shall enter into bond before the Clerk of this Court in the penalty of Fifty ($50.00) dollars, conditioned to pay the value of the property levied on by W. R. Blow, Constable, namely, one iron safe, and to pay all such costs as may be awarded against the said complainant, and all such damages as may be incurred in case the injunction shall be dissolved. All of which is certified to the Clerk of the Circuit Court of Southampton County to be entered in his chancery order book.

Robert R. Martin

L. Porter and W.R. Blow,

vs. } Answer

Seaboard & Roanoke R.R. Co.

1905 Mar. 15th, Filed.

B. H. Mellon C.C.

The answer of B.L.Porter and W.R.Blow to a Bill in Equity, exhibited against them in the Circuit Court of Southampton County by the Seabord and Roanoke Rail Road Company, a Corporation.

These respondents for answer to the said bill, answer and say: That it is true as stated in the said bill that on the 26th day of November, 1904, a warrant was issued against the Seabord and Roanoke Rail Road Company, the name of the said Company being abbreviated in this form, viz., the "Seabord and R. R. Road Co.", said warrant being issued by T.A.Bishop, a justice of the peace for the county of Southampton, summoning said Company to appear at Handsoms, Va., in said County, on the 8th day of December, 1904, to answer the complaint of B.L. Porter for the sum of $9.50, damages sustained by the said Porter for the killing of one dog, the property of said Porter, by one of said Company's locomotives or trains; that on the day named as the return day of the said warrant judgment was granted the said Porter for the sum of $9.50, on which judgment execution was issued &c., and certain property of the said Company advertised for sale, the judgment and execution in which case will appear from the said warrant filed herewith as "Exhibit A".

These respondents deny each and every other alleagtion of the said bill.

They deny that said warrant was not served according to law.

They deny that there is no such corporation as the Seabord and R.R.Road Co., in this particular,to-wit:-That while strictly and technically speaking said Corpoeration is known as the "Seaboard and Roanoke Rail Road Company", yet the designation in said warrant in abbreviated form did not even amount to a misnomer, and they state that it wa s sufficient to all intents and purposes to amount to a compliance with the law governing the issuance of warrants by justices of the peace in this state, and they ~~the~~ further state in verification that

that the Company did receive notice, though no formal appearance was made, because on or before the day set for the trial of the said warrant the Company by its attorney wrote to said justice T.A.Bishop concerning said case.

These respondents further deny that that process was not served according to law on the said Company. On the contrary, D.J.Davis who was then agent at Handsoms, Va., on whom the said warrant was served was either the agent of the complainant of the Seabord Air Line Railway Company, who may be lessees, of the complainant, and in either event service on him was sufficient as provided by Sec. 3226 of the Code of Virginia. *though this is not admitted*

These respondents then state that it was the duty of the defendant, having been served with rpocess to have appeared and defended their interest, so that if the respondent B.L.Porter, was proceeding erroneously he could have then been defeated, and have incurred no other costs than that of the justice court, but on the contrary complainant seem to have preferred an injunction suit, an expensive proceeding, and he states that such failure of defendant to make defense at law was such gross negligence that it should not now be allowed to cause him further inconvenience and expense in this proceeding.

Your respondent, B.L.Porter, also denies that he had not listed said dog for taxation according to law. On the contrary he states that he had so listed said dog for the year in which it was killed and the year preceeding, and he verifies said statement by a certificate from the commissioner of the revenue from his District, filed herewith as"Exhibit B", and the failure of said commissioner to make return of the said dog as listed for taxation to the Clerk's Office could not be properly chargeable to said respondent ~~as~~ but was due to the neglect of the said commissioner.

For these reasons your respondents claim that the judgment against the complainant ought to stand, and they respectfully ask that the injunction be dissolved and the suit dismissed.

And now having fully answered, these respondents pray hence to be dismissed with their costs &c.

B.L. Porter

Joseph B. Prince p.d. W.R. Blow

State of Virginia,

Southampton County, to-wit:-

I, Joseph B.Prince, a commissioner ~~of~~ in chancery of the Circuit Court for the county aforesaid, in th e state of Virginia, do hereby certify that B.L.Porter and W.R.Blow, whose names are signed to the foregoing answer, personally appeared before me in my county aforesaid, and made oath that the statements contained therein, so far as made of their own knowledge are true, and so far as made from knowledge derived from others they believe them to be true.

Given under my hand this 14th day of March, 1905.

Joseph B Prince

Comr. in Chy. Cir. Ct. Southampton Co.

Exhibit B

This is to certify That Mr.
Benj L. Potter listed one Male
Dog 1904.
Jan 2nd 1905. J. R. Dickens.
Comt. Revenue

B. L. Porter,
Gum, Va

Seaboard and Roanoke Rail Road Company

vs.

B.L.Porter and W.R.Blow.

Brief of Defendant's Counsel.

Counsel for the Railroad Company contends that no service of warrant was served on it:-

We contend that there was a service of the warrant in entire accordance with the provisions of Sec. 3226 of the Code of Virginia. That section provides(as amended by Acts. 93 and '94, p. 515; "Where and corporation is operated by a trustee or trustees for its own benefit, or for the benefit of its creditors, or by a lessee of lessees, or by a receiver or receivers appointed by any court, it shall be sufficient in any suit or proceeding against such corporation, its trustee or trustee, lessees or lessees, receiver or receivers to serve the process or notice on such trustee or trustees, lessee or lessees, receiver or receivers or on any one of them, or ANY OF THEIR RESPECTIVE AGENTS, if none of said trustees or lessees, or receivers, reside in the county or corporation wherein the case is commenced. ***"

In the case at bar the property killed was upon the line of the, or track, of the the complainant company, and service was upon either its agent or the agent of its lessee, and it is immaterial,therefore, as to this proceeding whether he was their agent or the agent of its lessee,the Seaboard Air Line Ry. Co.,the section above quoted making the service sufficient in either case.

Defendants further contend that the description of the Company as " Seabord and R.R.Road Company"*** is entirely sufficient, it being merely an abbreviation of the entire name, ~~and though not a necessary thing being taken~~ ~~taken from one of plaintiffs freight~~

"If properly described but incorrectly named the mistake is a misnomera, but if neither properly described nor named the mistake is fatal." 1 Thompson Corporations 293.

First Nat. Bank vs. __ _____, 23 S.E. (W.VA.)792.

On this same subject Mr. Lile in his Notes to Vol. 1, Minors Ins., at p. 146 says:-

"Where the mistake in the name of the corporation, plaintiff or defendant, is slight, and it clearly appears what corporation is meant, the mistake is pleadable in abatement, only."

Bank of Virginia v. Craig, 6 Leigh,399
Mason v.Farmer's Bank, 12 Ib.90
1 Morawetz on Corp., (2nd Ed.) Secs.352-5.

Especially,then, should this description of the corporation be sufficient where the proceeding is before a justice of the peace where the strict and binding rules of pleading do not prevail.

The answer of defendants, with which is the original warrant and judgment shows the judgment to have been entered, "B.L.P. v. Seab. & R.R.R. Co." and also on the account as against the "Seaboard and R.R.R.Company" in favor of"B. L.Porter".

This,we contend answered every requirement of the law.

The mistake of the Constable, W.R.Blow in advertising the property for sale, we contend, does not affect the merits of this case in any way.

The quotation by the counsel for complainant from Stewart & Palmer vs. Thornton et als, 75 Va. 216, is taken from a case where the corporation was not even named, it being against the members of the corporation individually, the bill naming each, and the court used the language broadly, in stating that where the rights of a corporation were involved it should be sued in its corporate name.

We submit that these are a complete answer to every contention in the brief of complainant.

We submit that the complainant was duly served with notice

that the description of the corporation in the warrant was sufficient, that they did receive due notice, and that it is now too late, these facts existing, to make defence in equity.

In Morgan v. Carson, 7 Leigh 241, Tucker,P.,said: "The plaintiff seeks here to arrest a judgment at law on a ground of defense,which might have availed him in a court of law, and which he neglected to make. Such an attempt can not receive the countenance of this court. A long train of decisions, no longer necessary to be cited or reviewed, leaves us no room for hesitation in dismissing such a case from the equitable forum."

We ask that the injunction in this cause be dissolved, and that the defendants be allowed to recover of the defendant the amount of their judgment, and costs, and their costs in this suit expended.

Respectfully submitted,

Joseph B Bruce

Counsel for the defendants.

I omitted to enclose the carbon copy of letter to Bishop- Please attach same to my brief-

J.L.M.

December 6th., 1904.

Mr. T. A. Bishop, J. P.,

Handsoms, Virginia.

Dear Sir:-

I have just received notice that a warrant will be tried before you in favor of B. L. Porter against the Railroad Company on December 8th. at Handsoms, the claim alleged in said warrant being the killing of one dog of the value of $9.50. I wish to say that in my judgment the railroad company is not legally liable for any amount by reason of this warrant, a copy of which I have, and will resist its payment as far as it is possible. I wish, however, to be entirely fair to you and the justice, and to Mr. Porter, and therefore I will say that if a judgment is entered in this case that I shall sue out an injunction in chancery and prohibit the collection of the money, or attempt to do so. If I succeed in prohibiting this collection it will cost Mr. Porter not less than $15.00 court costs, and I therefore give this notice because I do not wish to run him to that expense, as the company is determined to fight this case to the end if it is pressed by the plaintiff. I make this statement so that you may be in full possession of the facts, and I hope you can properly advise Mr. Porter of the contents of this letter, and that he will abandon the action. I am satisfied this will be a profitable thing for him to do.

Please advise me what you do in the matter on the 8th.

Yours very truly,

Dic.JLM/JAB

COPY

SEABOARD & ROANOKE RAILROAD COMPANY

vs.

B. L. PORTER & W. R. BLOW

--Brief of Complainants' Counsel--

The railroad company contends that no service of warrant was served on it and no judgment given against it.

In proceedings against Seaboard & Roanoke R. R. Road Co. a judgment was entered as follows: B. L. P. vs. S. & R.R.R. Co., see Exhibit "B" with bill of complaint, and upon this supposed judgment, an execution was issued against the property of Seaboard & R. R. Road Co., and by W. R. Blow, Constable, levied on the property of complainant company, advertising same for sale to satisfy execution on, as he says, "judgment in my hands vs. S.A.L. R.R.Co.", see Exhibit "D" filed with complainant's bill.

We contend that the proceedings in so far as it purports to be a judgment against complainant company, is absolutely void, and that any attempt to subject its property by authority thereof is unwarranted in law.

The Seaboard & Roanoke Railroad Company has not been warranted or served with any notice of suit, nor has it or any one for it made any appearance before the Justice.

"When the rights and interest of a corporation are involved, they can be asserted and enforced by the corporation only in its corporate capacity and in its corporate name."

Stewart &. Palmer v. Thornton et als. 75 Va.,216;
Lyles Notes to Vol.1 Min.Int.,146.

I refrain from referring to other defects and irregularities in the proceedings, deeming the objection raised as fatal to defendant's case.

We submit that the attempt to sell complainants' property by virtue of the proceedings as set up in this cause, is clearly without authority, and the injunction should be perpetuated.

As counsel for defendant, in the answer to complainants' bill has referred to a letter written by complainants' counsel, we herewith submit carbon copy of said letter that the court may see that no appearance was made in this case, and that no regognition of the justice or right of the case was therein made.

Respectfully submitted,

May 16 1905

Jas. L. Wilmore,
Attorney for
Complainant.

Seabord and Roanoke
Rail Road Co., a
Corporation,

vs. Decree.

W.R.Blow and B.L.Porter.

In Term.

March 22nd,1905.

Enter this,

The Seabord and Roanoke Rail Road Company,
a Corporation,
vs.
Decree.
B.L.Porter and W.R.Blow.

This cause came on this day to be heard on the bill of the complainant, the answer of the defendants, with replication thereto, and the exhibits filed with the bill and answer, and was argued by counsel.

On consideration whereof, the court doth adjudge, order and decree that the injunction awarded the plaintiff in this cause be dissolved, and the bill of the be dismissed, and that it pay to the defendants their costs by them about their defense in this behalf expended.

The Seabord and Roanoke Rail Road Company,
a Corporation,

vs. Decree.

B.L.Porter and W.R.Blow.

This cause came on this day to be heard on the bill of the complainant, the answer of the defendants, with replication thereto, and the exhibits filed with the bill and answer, and was argued by counsel.

On consideration whereof, the court doth adjudge, order and decree that the injunction awarded the plaintiff in this cause be dissolved, and the bill of the be dismissed, and that it pay to the defendants their costs by them about their defense in this behalf expended.

Seabord and Roanoke Rail Road Co.'s a Corporation.
vs. Decree.
W.R.Blow and B.L.Porter.
In Term.
March 22nd, 1865.
Enter this.

In the Circuit Court of Nansemond County, In Vacation, February 8th. 1902.

Seaboard Air Line Railway Company, Complainant,

Against,

James R. Darden, et als. Defendants,

On motion of the complainant, an Injunction is granted it in accordance with the prayers of this bill, restraining the defendants James R. Darden and W.R. Blow, Constable from further proceeding with the execution issued by L.J. Drake Justice of the peace, upon the judgment obtained against the Complainant, Seaboard Air Line Railway Company, on January 25th 1902, and the said W.R. Blow, constable as aforesaid is enjoined and restrained from selling or attempting to sell under his said execution, the property, by him levied upon, and advertised for sale, as setforth in complainants bill, until the further order of the Court ~~and he is required to restore the property so levied upon, to the custody of the complainant.~~

But before this injunction shall take effect, thesaid Complainant or some one for it, shall enter into bond, with good security, before the Clerk of the Circuit Court of Southampton County, in the penalty of $75.00, conditioned to pay the judgment, proceedings on which are thus enjoined, and all such costs and damages as may be awarded against it in case this injunction shall be dissolved.

To the clerk of the Circuit
Court of Southampton County.

Robert R Prentis
Judge.

A Copy. Teste: L. A. Gay C.C.

Bond as required under this order has been executed

L. A. Gay C.C.

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of Southampton County--Greeting:

WE COMMAND YOU THAT YOU SUMMON Jas. R. Darden,

L. J. Drake a Justice of the peace of Southampton County and W. R. Blow a Constable of said County

to appear at the Clerk's Office of our Circuit Court of Southampton county, at the Rules to be holden for the said Court on the 3rd Monday in February 1902 ~~next~~, to answer a Bill in Chancery exhibited against them in our said Court by Seaboard Air Line Railway Company.

And this them shall in no wise omit under penalty of law. And have then there this writ.

WITNESS, L. A GAY, Clerk of our said Court, at the Courthouse, this 17 day of February 1902, ~~189~~, in the 126 year of the Commonwealth.

Teste: L. A. Gay C. C.

Seaboard Air Line Railway Co.

vs. } Spa: Sur chg.

Darden et als.

1902. 22d February Rules

Executed Feb. 8th
1902 by delivering a copy
of this "Spa in Chan." to each
of the within named parties
Defendant

J. W. Williams
Sheriff

(3)

McLemore & Barksdale p.q.

THE COMMONWEALTH OF VIRGINIA

To the Sheriff of the City of Richmond, Greeting:

You are hereby commanded to summon

S. A. L. Railway Co

To } Bond

Jas R Darden

The Commonwealth.

1902. 8th Feby. filed

L. A. Gary Cl. C.

Know All Men by These Presents, That we, James L. McLemore, Principal and B. F. McLemore Surety

are held and firmly bound unto the ~~COMMONWEALTH OF VIRGINIA~~ James R. Dardin in the just and full sum of Twenty Five DOLLARS, to the payment whereof, well and truly to be made to the said ~~Commonwealth~~ James R Dardin, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

And we waive the benefit of our exemption as to this obligation, and also waive any claim or right to discharge any liability to the said ~~Commonwealth~~ obligee arising under this bond, or by virtue of the office, post or trust herein mentioned, with coupons detached from bonds of the Commonwealth.

Sealed with our seals, and dated this 8th day of February in the year of our Lord ~~one thousand eight hundred and~~ 1902, and in the ---- year of the Commonwealth.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas Seaboard Air Line Railway Company, a corporation has on the 8th day of February 1902 sued out before Robert R. Prentis Judge of the Circuit Court of Southampton County, in vacation, an Injunction, enjoining and restraining James R Dardin and W. R. Blair Constable from further proceeding with the execution issued by L. J. Drake Justice of the peace, upon the judgment obtained against the Complainant, Seaboard Air Line Railway Company on January 28th 1902,

Now if the said obligor shall pay the judgment, proceedings on which are thus enjoined, and all such costs as may be awarded against the Complainant in case the dissolve injunction is dissolved and damages as may be incurred, then this obligation to be void otherwise to remain in full force and virtue.

James L. McLemore SEAL

B. F. McLemore SEAL

SEAL

SEAL

SEAL

In the office of the Clerk of the ~~Circuit~~ Court of ~~Nansemond~~ Southampton County, on the 8th day of ~~February~~ 1902 ~~189--~~

The above bond was executed and acknowledged by the obligors (the surety ---- justifying on oath as to ~~his~~ sufficiency) and recorded.

Teste:

L. A. Gay CLERK.

S. & K. R. R. C.

(v) } Stat: Rules

Porter et: al:

Seaboard & Roanoke Railroad
Company. a Corporation.

v.

B. L. Porter & W. R. Blow

1904. Dec 22nd. Process issued & 1st Janry
Rules 1905.

1905. 1st Janry Rules: Process returned Executed.
Bill & Ex: filed.
Demurrer.

1905. 7th Janry Rules: Bill taken for Confessed
and Cause set for hearing

S & R R Co.
&
Porter & Blas. } Costs.

Sum. 25 - Copies 25 .50
Rec 15 - Atty 10. Docket 18 Rule .50 .96
Filing Bill 15. 50 Exhibit 15 .30
Cpy Ex 25 @ Certifying same 37 .52
Injunc Bond 75. Rule 50 1.25
Filing return 35. filing Answer 15 .50
Rep 15. 2 decrees @ 36 .72
Jay Cos 4.40 Filing away papers 25 .65

Bill $ 5.40
Stiff 1.00
Costs: 16.50

To }

The Commonwealth.

1904 - Dec 22. Filed

Know All Men by These Presents, That we, James L. McSmore Principal and T. H. Birdsong Surety

are held and firmly bound unto the COMMONWEALTH OF VIRGINIA in the just and full sum of Fifty DOLLARS,

to the payment whereof, well and truly to be made to the Commonwealth of Virginia, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

And we waive the benefit of our exemption as to this obligation, and also waive any claim or right to discharge any liability to the Commonwealth arising under this bond, or by virtue of the office, post or trust herein mentioned, with coupons detached from bonds of said State.

Sealed with our seals, and dated this 21st day of December in the year of our Lord one thousand nine hundred and four, and in the 129 year of the Commonwealth.

In Testimony Whereof, the said James L. McSmore principle and T. H. Birdsong surety hereto set ~~his~~ hands and seals, ~~and the said~~ ~~has caused its corporate name to be hereto signed, and its corporate seal to be hereto affixed, this~~ day of 21st day of December in the year of our Lord, one thousand nine hundred and four, and in the 129 year of the Commonwealth.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the ~~above bound~~ said Seaboard & Roanoke Railroad Company, a corporation, to whom an injunction has this day been awarded by the judge of this Court in Vacation in the Chancery cause of Seaboard & Roanoke Railroad Company, a corporation Vs. S. L. Porter and W. R. Blair Constable, Shall pay to the defendants the value of the property levied on by W. R. Blair Constable, (namely, One iron safe) and pay all such costs as may be awarded against the said Complainant, and all such damages as may be incurred, in case the injunction shall be dissolved, then this obligation to be void, otherwise to remain in full force and effect

James L. McSmore SEAL

T. H. Birdsong SEAL

SEAL

SEAL

SEAL

VIRGINIA:

In the Clerk's Office of the Circuit Court of Nansemond County, on the _____ day of _____, 190____:

The above bond was executed and acknowledged before me by the obligors to the same (the securit____ justifying), and ordered to be recorded.

Teste:

_____

JAMES L. McLEMORE. JAMES H. CORBITT.
McLEMORE & CORBITT,
ATTORNEYS AT LAW,
SUFFOLK, VA.
COURTS: NANSEMOND, SOUTHAMPTON, ISLE OF WIGHT.

2/8/02

Dear Mr. Gay

Please issue summons &c. ahead in this case
whom Sheriff serve by 2 p.m. at the latest - Inclose
copies of the Injunction order - Get Judge Prince & Jos
Prince or Papa to sign the inclosed bond so that you
can certify the bond as given -

Yours truly,

J. L. McLemore

Form 8.

SEABOARD
AIR LINE RAILWAY

Portsmouth, Va., Dec. 23, 1904

B.L.Porter vs. Co.

Mr.J.L.McLemore,

Suffolk, Va.

Dear Sir:

I have yours of the 22nd and note contents.

We are in full accord as to this situation. If the dog is listed for taxation it is property and the statute is "broad gauge".

It will require some ingenuity to enforce our view, which is strictly in accordance with common sense and reason, and I hope Judge Prentis will so see it.

Yours truly,

L. Watts

General Counsel.

Dictated by Mr. Watts.

Executed Dec 22 - 1904 by delivering a true copy of within writ to each of within named Defendants

J. T. Gillespie Sheriff

Sea Board &
Roanoke Railroad
Company, a
Corporation
vs.
B. L. Porter and
W. R. Blow
1905 1st Jany.
Rules.

THE COMMONWEALTH OF VIRGINIA.

TO THE SHERIFF OF SOUTHAMPTON COUNTY, GREETING:

WE COMMAND YOU TO SUMMON B. L. Porter & W. R. Bland, Constable

to appear at the Clerk's Office of our Circuit Court of Southampton County, at the Rules to be holden for the said Court on the First Monday in January 1905 next, to answer a Bill in Chancery exhibited against the Pen in our said Court by Seaboard & Roanoke Railroad Company, a corporation

And this shall in nowise omit under penalty of law. And have then there this writ.

Witness, B. F. McLEMORE, Clerk of our said Court, at the Courthouse, this 27" day of Dec'r, 1904, in the 129" year of the Commonwealth.

Teste:

B. F. McLemore, C. C.

1905

Seaboard Roanoke
Railway Co.
v. Decree
Blair & Porter

1905. July 19

Entry:
Robert R. Prentis

Entered.
O. O. B. No. 177.

Seaboard & Roanoke Railroad Company,
a Corporation,

vs. Decree.

B. L. Porter and W. R. Blow.

This cause came on this day to be heard, upon the bill of the complainant, and exhibits therewith filed, upon the injunction granted to complainants Dec. 21st, 1904, and upon the answer of defendant filed March 15th, 1905, with general replication thereto, and was argued by counsel.

On consideration whereof, and for reasons appearing in the record, the court doth adjudge, order and decree that the injunction heretofore awarded the plaintiff be made perpetual, and that the plaintiff recover of the defendants its cost by it expended, and that the [illegible] be removed from the docket.