

Hillsborough, }  
 Oct. 4, 1901. }

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GLAUBER MANUFACTURING CO. v. VOTER & Tr., CUTTER,  
*Claimant.*

An order for the payment of money, made and accepted in good faith, is valid as against a subsequent attachment of the funds in the hands of the acceptor by a creditor of the assignor.

FOREIGN ATTACHMENT. Issue between the plaintiffs and the claimant. Trial by the court, and case transferred from the May term, 1901, of the superior court by *Peaslee, J.*

The writ was served upon the trustee, February 26, 1898. A verdict was found against the defendant in March, 1900. The trustee's disclosure showing that he owed the defendant was filed in October, 1899. After the rendition of the verdict the claimant moved for and was granted leave to appear as claimant of the funds in the hands of the trustee. Up to this time the plaintiffs had no information of the claim so set up.

At the trial of the issue between the plaintiffs and the claimant, it appeared that in July, 1897, the claimant had a claim against the defendant which he tried to collect, and that thereupon the defendant gave him an order on the trustee as follows: "Nashua, N. H., July 19, '97. Mr. F. D. Cook. Please pay to H. A. Cutter when due the am't of last payment on plumbing contract, Cortland st. job, am't being sixty-six and 25-100 dollars (\$66.25). C. A. Voter & Co. V." Across the face is written: "Accepted. F. D. Cook, July 19, 1897." Subsequently the claimant brought suit in Voter's name against Cook to recover the claim represented by the order, and recovered judgment in June, 1898. In that suit the claimant's name was indorsed on the writ as plaintiff in interest.

The court discharged the trustee, and the plaintiffs excepted.

*Wason & Moran*, for the plaintiffs.

*Henry A. Cutter*, for the claimant.

BLODGETT, C. J. No fraud appearing as to the defendant's order to the claimant and its acceptance by the trustee, by their subsequent attachment of the credits alleged to be due the defendant from the trustee the plaintiffs acquired a lien only upon the defendant's then existing interest in those credits, and can hold only what the defendant himself could recover if the present suit were brought by him. Upon familiar principles, this would be

nothing. For recent decisions directly in point, see *Marsh v. Gurney*, 69 N. H. 236, 237, and *Pollard v. Pollard*, 68 N. H. 356, 357. See, also, *Corning v. Records*, 69 N. H. 390, 396, 397.

*Exception overruled.*

All concurred.

Sullivan, }  
Oct. 28, 1901. }

BLUE MOUNTAIN FOREST ASSOCIATION *v.* BORROWE.

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A by-law of a corporation providing that an insufficiency of income to meet disbursements may be made up by annual assessments upon the capital stock, and that any unpaid assessment shall be a charge against the delinquent interest, is binding upon a shareholder who has assented thereto. Where the by-laws of a corporation stipulate that all stock shall be issued subject to their provisions, and that every certificate shall refer on its face thereto, the acceptance of such certificate by an original shareholder, without objection, is conclusive proof of an assent to the conditions thereby imposed.

In an action by a corporation to enforce a lien for assessments upon the capital stock, the delinquent shareholder cannot interpose the defence that a by-law which provides a method for the disposal of any interest, and under which the stock was acquired, is void as an illegal restriction upon the right of alienation.

Where the by-laws of a corporation provide that unpaid assessments upon the capital stock shall be a charge against the delinquent interest, and explicitly point out the manner in which shares shall be disposed of, no other method can be adopted for a sale of stock in the enforcement of the lien.

BILL IN EQUITY. Facts found by the court. Transferred from the November term, 1900, of the supreme court by *Parsons, J.*

The Blue Mountain Forest Association is a corporation organized by the late Austin Corbin, under chapter 152 of the General Laws, for the purpose of enabling him to conveniently manage the park owned by him, consisting of about 25,000 acres of land, including Croydon and Grantham mountains, all fenced and stocked with wild animals, located in the towns of Newport, Cornish, Croydon, and Grantham, in establishing and maintaining which he expended in the vicinity of half a million dollars. The capital stock of the association was fixed at \$6,000, which was paid in by Corbin, and \$5,500 was immediately repaid to him as the nominal consideration for his conveyance to the association of