

Sylvia Lake Co. v. Northern Ore Co.

242 N.Y. 144 (N.Y. 1926) · 151 N.E. 158

Decided Feb 24, 1926

Argued January 21, 1926

145 Decided February 24, 1926 *145

Appeal from the Supreme Court, Appellate Division, Third Department.

Alfred G. Reeves, Alton B. Parker and James C.

146 *Dolan* for appellants. *146 *Francis E. Cullen* for respondents.

McLAUGHLIN, J.

We are of the opinion that the judgments and orders appealed from should be affirmed, notwithstanding the claim of the appellants that they are invalid if they were rendered by Justice Borst after he became seventy years of age. Whatever may be said of his assuming to act after he became seventy years of age, he was, at least so far as third parties are concerned, a *de facto* justice. He was elected at the general election held in November, 1913, for a term of fourteen years or until the 31st day of December next succeeding the time when he became seventy years of age. Within ten days after the first day of January immediately following his election he, as appears from the record and from the appellants' brief, in pursuance of section 23 of the Judiciary Law, filed in the office of the Secretary of State a certificate stating that he had accepted the office of justice of the Supreme Court and taken the oath as *147 required by the Constitution and laws of the State, and certifying that he was fifty-six years of age on the 6th of July, 1913, and that his official term would expire by the completion of a full term prescribed in the Constitution on the 31st of December, 1927. This certificate was on file in the

office of Secretary of State at the time each of the interlocutory judgments and orders referred to in the complaint was rendered. It was a public document and third parties, so long as the same remained on file, had a right to rely upon the truth of the statements therein contained. It was a well-known fact that Justice Borst had been elected to the office of justice of the Supreme Court. He assumed to act and to discharge the duties pertaining to such office. Litigants had a right to rely upon the fact that he was qualified to discharge the duties pertaining to the office and that his acts in that respect were valid.

A *de facto* judge assumes the exercise of a part of the prerogatives of sovereignty and the legality of that assumption is open to attack by the sovereign power alone. This rule is founded upon the considerations of policy and necessity. It has for its object the protection of the public and individuals whose interests may be affected. Offices are created for the benefit of the public. Private parties are not permitted to inquire into the title of persons clothed with the evidence of such offices and in apparent possession of their powers and functions.

The supremacy of the law could not be maintained or its execution enforced if the acts of a judge having a colorable but not a legal title were to be deemed invalid. It is a well-established principle, recognized in all jurisdictions that, so far as the public and third persons are concerned, the official acts of a *de facto* judge are just as valid as those of a *de jure* judge. This is especially true when the State requires a judge to file in the office of the Secretary of State a certificate containing certain

information. No third party can be permitted, so
148 long *148 as the State allows such certificate to
remain on file, to question the truth of the
statements therein contained.

The judgments and orders appealed from should
be affirmed, with costs.

HISCOCK, Ch. J., POUND, CRANE,
ANDREWS and LEHMAN, JJ., concur;
CARDOZO, J., absent.

Judgments affirmed.
