MILLER and others *v.* KENT and others.

(Circuit Court, S. D. New York. April 10, 1883.)

EQUITY—RELIEF—REMEDY AT LAW.

Where moneys were deposited with defendants, to be held subject to the order of the complainants, and were by the defendants misappropriated and used for their own purposes, there is an adequate remedy at law, and a bill for relief in equity will not lie without showing that the moneys were misappropriated in violation of some active trust between the parties, involving confidence on the one side and discretion on the other, or that there were mutual accounts between the parties, or an account on one side of a nature to justify a bill of discovery.

In Equity.

Henry J. Bennett, for complainants.

L. A. Gould, for defendants.

WALLACE, J. This bill is demurred to for want of equity. The bill alleges that the defendants withhold five distinct sums of money deposited with them as commission merchants by the complainants, and which defendants were to hold subject to the order of the complainants, and that "defendants have used said moneys for their own purposes, and have profited thereby." There is no prayer for discovery. If the moneys were misappropriated in violation of some active trust between the parties, involving confidence on the one side and discretion on the other, or if there were mutual accounts between the parties, or even an account on one side of a nature to justify a bill of discovery, there might be a case of equitable cognizance. Upon the facts alleged, the complainants have a plain, adequate, and complete remedy at law.

There are pressions of opinion in some of the more recent English cases to the effect that a principal may always resort to equity to compel an accounting by his agent; but in all the cases where the bill was sustained, the accounts were complicated and a discovery was essential. *Mackenzie* v. *Johnston,* 4 Mad. 373; *Phillips* v. *Phillips,* 9 Hare, 471; *Shepard* v. *Brown,* 9 Jur. (N. S.) 195; *Hemings* v. *Pugh,* Id. 1124; *Makepiece* v. *Rogers,* 11 Jur. (N. S.) 314. The cases are not authority for relaxing the rule that a bill, in general, will not lie unless some special ground is laid; as the inability to get proof, unless by discovery, (*Dinwiddie* v. *Bailey,* 6 Ves. 136; *Moses* v. *Lewis,* 12 Price, 388;) or where, independently of discovery, intricate and perplexing accounts exist which cannot be conveniently investigated at law. Story, Eq. Jur. § 462.

The demurrer is sustained.

BILL *v.* WESTERN UNION TEL. CO. and others.

(Circuit Court, S. D. New York. March 26, 1883.)

1. CORPORATIONS — LEASE BY BOARD OF DIRECTORS — VALIDITY — MAJORITY OF BOARD OF LESSOR DIRECTORS OF LESSEE.

As the directors of a corporation are its agents, and represent stockholders, who are often practically voiceless in behalf of their own interests, they are held to the exercise of the utmost good faith in the administration of their trust; and where a statute authorizes a telegraph company to lease or sell its franchises and property to any other telegraph company, provided the lease or transfer be approved by a three-fifths vote of its board of directors, and also by the consent in writing, or by a vote at a general meeting, of three-fifths in interest of the stockholders, a lease of the property and franchises of a telegraph company is voidable at the election of the lessor, if at the time the lease was made a majority of the board of the directors of the lessor were directors of the lessee also, and the lessee owned nearly two-fifths of the stock of the lessor.

2. SAME—SUIT BY STOCKHOLDER, WHEN MAINTAINABLE.

An individual stockholder can maintain an action to set aside such a lease only when it is made to appear to the court that he has exhausted all the means to obtain, within the corporation itself, the redress of his grievances, or action in conformity with his wishes, and that he has made proper effort to induce action on the part of the other stockholders.

In Equity.

Charles M. Da Costa and *Luke A. Lockwood*, for complainant.

Dillon & Swayne, for defendants.

WALLACE, J. The complainant, a stockholder of the Gold & Stock Telegraph Company, has filed a bill to set aside a lease of the property and franchises of that company to the Western Union Telegraph Company for the term of 99 years, and now moves for an injunction *pendente lite* to restrain the lessee from disposing of the property acquired under the lease. The lessor and lessee are both corporations of this state, and by the act of May 2, 1870, authority is conferred upon any telegraph company organized under the laws of this state to lease or sell its franchises and property to any other telegraph company organized under the laws of the state, provided the lease or transfer be approved by a three-fifths vote of its board of directors, and also by the consent in writing, or by a vote at a general meeting, of three-fifths in interest of the stockholders. The theory of the complainant's bill is that the lease was *ultra vires*, because the necessary consent of the directors and stockholders has not been given, and also that it was made for an inadequate consideration, and in breach of trust by the directors, and in the interest of the lessee. Both the-