purpose alone, without leave of court. Daniell, Ch. Pr. 453, 512, 537. But if he asks the privilege of fighting his side of this battle under a special appearance, I do not think he should be allowed to do it.

The motion is overruled.

OWENS v. WIGHT.[1]

(Circuit Court, D. Colorado. December, 1883.,

1. LEASE—COVENANT OF.
   The execution of a lease for real estate implies a covenant to lessee for quiet enjoyment during the term.
2. SAME—REMEDY OF LESSEE.
   In case of entry upon the demised premises by the lessor during the term, the remedy of the lessee is in damages by suit at law for breach of covenant, and not by action in equity for an accounting.

On Demurrer to Bill.

C. I. Thompson, for plaintiff.

A. W. Rucker, for defendant.

HALLETT, J. The bill avers that defendant and others demised to plaintiff a mining claim called the Vanderbilt lode for a term of six months, from March 7, 1883; that defendant afterwards, and during said term, entered on the said premises, and took therefrom a large quantity of valuable ore, and plaintiff prays that defendant may be required to account for said ore. If, as alleged, defendant and others made a lease to plaintiff, a covenant for quiet enjoyment would be implied from such letting. Tayl. Landl. & T. § 304; Sedg. Dam. 183, note. The entry into the premises by defendant during the time was a breach of the covenant, and plaintiff's remedy is in damages for such breach. What the measure of damages may be is not for present consideration. Upon the facts stated, plaintiff is not entitled to an account, and the remedy is not in equity, but at law. Plaintiff may have the case transferred to the law docket if he wishes to do so. Whether the action shall be against the defendant alone or against all of the lessors is not now to be determined. Defendant should have demurred before answering, and therefore he must pay the costs of the answer, and the costs, if any, upon the issue of fact joined. The answer may be withdrawn, and the demurrer will be sustained.

[1] From the Colorado Law Reporter.

WINANS *v.* MAYOR, ETC., OF JERSEY CITY.

(*Circuit Court, D. New Jersey.* December 12, 1883.)

MUNICIPAL BONDS—BONA FIDE HOLDER—PURCHASER WITHOUT NOTICE OF DEFECT.

Rouede v. *Mayor, etc., of Jersey City, ante,* 719, followed.

In Case.

Robert W. De Forest, for plaintiff.

Allan L. McDermott, for defendant.

B. Williamson and *F. L. Hall,* of counsel, for plaintiff.

NIXON, J. For the reasons assigned in the antecedent case of *Rouede* v. *Mayor, etc., of Jersey City, ante,* 719, judgment must be entered in the above case in favor of the plaintiff for the coupons, with interest thereon at the rate allowed by the state of New York, where the same was payable, which appears to be 7 per cent., from their maturity to January 1, 1880, and at the rate of 6 per cent. since that date.

GILMORE *v.* NORTHERN PAC. RY. CO.

(*Circuit Court, D. Oregon.* January 4, 1884.)

1. INJURY CAUSED BY NEGLIGENCE OF FELLOW-SERVANTS.

The rule first suggested in *Priestly* v. *Fowler,* 3 Mees. & W. (1837,) 1, that a master who has exercised due care and skill in the employment and retention of his servants is not responsible for an injury sustained by one of them in the course of his employment by the negligence of another, however distinct the grade or different the labor of such servants or how widely separated the locality of their several employments, is being modified by the course of judicial opinion and decision so as to meet the ends of justice in cases since arising of corporations and others engaged in varied and widely extended operations under one nominal and invisible head, but in reality divided into separate parts or divisions, under the direction and control of local bosses, superintendents, or heads of departments, who to all intents and purposes represent and stand for the corporation, with practically unqualified power to employ, direct, and discharge workmen, and to provide the necessary material and appliances for their convenient and safe employment.

2. WHEN FELLOW-SERVANT STANDS FOR MASTER.

It seems well established that a master is responsible to his servant for an injury sustained by him, without his fault, in consequence of the negligence of a fellow-servant, (1) when the latter, having authority over the former, orders him to do an act not within the scope of his employment, whereby he is exposed to a danger not contemplated in his contract of service, and he is injured in so doing; (2) where the master has charged the latter with the duty of providing proper material and appliances for carrying on a work in which he is personally engaged with the former or not, and by the neglect to do so he is injured.

3. CASE IN JUDGMENT.

In February, 1883, the Northern Pacific Railway was engaged in construcing its road through western Montana, and had many gangs of men, numbering not less than fifty each, at work on the line of the route, at from three to five miles