

or willfully, and that the assessment was in fact fair and equitable.

The court holds the assessment invalid, and orders a stay of proceedings in the case until a reassessment may be made according to the provisions of section 1210*b*, Rev. St., and subsequent amendments thereto.

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### HALE v. CONTINENTAL LIFE INS. CO.

(Circuit Court, D. Vermont. May 23, 1884.)

#### LIFE INSURANCE COMPANY—DIVIDENDS—POLICY OF DIRECTORS—FAILURE TO ANSWER—CONFESSION OF BILL.

When the question in a suit in equity, as shown by the bill, is whether the policy of the directors of an insurance company in declaring dividends has been lawful and right, and the defendant fails to answer this question after repeated allowances of exceptions for failure to answer the point, the orator is entitled to take the bill as confessed, so far as this point is concerned.

In Equity.

*Gilbert A. Davis*, for orator.

*Charles W. Porter*, for defendant.

WHEELER, J. The defendant has not yet answered and set forth its profits during the years in question out of which dividends were or might have been declared, nor any reason for not setting them forth. It has stated the policy of its directors in respect to dividends, and their reasons for adopting the policy which they did adopt; but those matters were not what were required for answer, nor the subject of the exceptions. The defendant assumed to make profits from its assets derived from premiums paid by policy-holders, in which some or all of the policy-holders were entitled to participate by way of dividends, and the orator was among those so entitled. The answer and its amendments show that the directors made dividends, but does not show the amount of profits from which the dividends were made. To make such dividends there must have been an ascertainment of the profits of the company as a basis of the dividends. This basis, as ascertained by the directors, with the declaration of dividends by them, would or should be matters of record, and be very easy of statement from the records. It is not shown that those are not full and complete records in all these respects ready to be answered from. The course and policy of the directors may have been lawful and right, and may not. Whether so or not, is not the question now. The orator is entitled to a statement of the facts in the answer as a part of his case as made and charged by his bill. This statement is not forthcoming after repeated allowance of exceptions to the want of these plain and obvious facts. The exceptions are substantially the same as those allowed before, and under the sixty-fourth rule in

equity the orator is entitled to take the bill, so far as the matter of these exceptions is concerned, as confessed.

The exceptions are again allowed, and leave to take so much of bill as confessed, granted.

### FLETCHER and others v. NEW ORLEANS N. E. R. Co.<sup>1</sup>

### NEW ORLEANS N. E. R. Co. v. FLETCHER and others.<sup>1</sup>

(Circuit Court, E. D. Louisiana. March, 1884.)

#### 1. INJUNCTION.

A motion to dissolve an injunction restraining a forfeiture, for the enforcement of which an action at law has been instituted, must depend upon the result of the action at law; *i. e.*, upon whether it shall be finally determined in the suit at law that the forfeiture must be enforced.

#### 2. EQUITY JURISDICTION.

A suit in equity cannot be maintained to have a forfeiture declared. The universal doctrine is that equity will relieve from, but never inflict, a forfeiture.

#### 3. SAME—WASTE.

The commission of waste of every kind will be restrained in equity till the rights of the parties are determined.

#### 4. EQUITY JURISDICTION.

The equitable jurisdiction of the circuit courts is the same in every state; it is not ousted by the fact that a local statute gives a peculiar remedy at law.

#### In Equity.

*Thomas J. Semmes, J. Carroll Payne, Henry J. Levvy, and Ernest B. Kruttschmidt*, for complainants in first case, and respondents in the last case.

*Robert Mott and Walter D. Denegre*, for the respondents in the first case, and complainants in the last case.

**BILLINGS, J.** These cases are submitted on a motion to dissolve an injunction in the first case, and a motion for an injunction in the second case. The facts necessary to state are briefly these:

The complainants in the first cause hold a builder's contract with the respondents for the construction of some 20 miles of trestle-work upon their road. In round numbers, some million of dollars had been paid to them by the railroad company, the respondents, of which amount sixty or sixty-five thousand dollars had been retained under the contract. At this stage of the work, and when the same was nearly completed, a difference arose between the railroad and the builders upon two points or particulars: *First*, the railroad contended that some \$10,000 of the trestle-work should be rebuilt by the builders, inasmuch as they claimed that it had been destroyed by fire through their negligence, and before the road was accepted by the railroad company; and, *secondly*, that the fenders, the cost of which would be \$10,000, should, by the contract, be built by the builders. The railroad gave the seven days' notice required by the contract, and at the end of that time were about taking possession of the creosote works, the material, and the so-called plant, as

<sup>1</sup>Reported by Joseph P. Hornor, Esq., of the New Orleans bar.