

being chargeable against the receiver directly, the only question is as to what should be properly allowed therefor. Under some circumstances it might appear that the amount is moderate; but, in the interests of all concerned, the court thinks that \$200 is ample.

The court, therefore, orders the receiver to pay to the petitioners, Smith & Harrison, the sum of \$700, and that there be assessed against the defendant railroads the sum of \$500; the latter sum to abide the final determination of the case.

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JOHN CROSSLEY SONS, Limited, v. CITY OF NEW ORLEANS.<sup>1</sup>

(Circuit Court, E. D. Louisiana. April 21, 1884.)

EQUITY JURISDICTION—ACCOUNT.

An account, if complicated so as to be incapable of being had at law, of itself is ground of equity jurisdiction. Such an account, especially when it must be followed by the proportioning and distribution of a fund, can be taken in a court of equity.

Cause Submitted on General Demurrer, the ground in support of it being that there is remedy at law.

*Henry C. Miller*, for complainants.

*Charles F. Buck*, City Atty., for defendant.

BILLINGS, J. The bill sets forth that in 1858 a system of drainage was established by the legislature of the state, whereby certain assessments were authorized to be made and recorded,—all of which was done,—whereby numerous tracts or pieces of land within the parish of Orleans became subject to liens. Under this first act the whole matter of drainage was committed to a board of commissioners. The bill then avers that in 1871 the legislature superseded the board of drainage commissioners by the Mississippi & Mexican Gulf Ship Canal Company. To this latter company was transferred all the rights and liens arising from the drainage assessments. The moneys collected therefrom were declared to be a trust fund, and the city of New Orleans was authorized and required to draw warrants for work done by said corporation in the matter of drainage. The bill then shows that in 1876 the city of New Orleans was substituted as the corporation to conduct the said drainage business,—was authorized to purchase all the franchises, tools, etc., of the Mississippi & Mexican Gulf Ship Canal Company, and to pay for the same by warrants to be drawn by said city against said trust fund. The bill then shows that the complainants are the holders of the warrants so drawn against the said trust fund by said city for such work, and for the price of the said purchase to the amount of \$436,000. The bill is

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

filed in behalf of the complainants and "all who hold obligations of the class held by them," and asks, among other things, "an account of all warrants entitled to payment from and out of said fund."

For the purposes of this hearing there is no question made or submitted as to the legality or validity of the complainant's demands. The sole question now to be determined is, does the complainants' bill show a cause of action over which a court of equity can take cognizance? Its first object, as demanded, is an account or disclosure of all the warrants drawn against these alleged mortgage liens. An account, if complicated so as to be incapable of being had at law, of itself is ground of equity jurisdiction. Such an account, especially when it must be followed by proportioning and distribution of a fund, can be taken in a court of equity. The bill of complainant, therefore, presents a cause of action which can be dealt with, at least to the extent of the accounting, by a court of equity, and the demurrer must therefore be overruled, and let the defendant answer the bill on or before the second Monday of the next succeeding rule-day.

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MUNDY and others v. DAVIS.<sup>1</sup>

(Circuit Court, D. Kentucky. April 1, 1884.)

CONTRACT—CONSTRUCTION OF.

A. holding less stock than B. in a railroad corporation, they agree, in order to equalize their respective holdings, that the stock held by them shall be common property, and that A. shall give his note to B. for the amount necessary to equalize the joint-stock account, the cost of the stock being computed as of the date of the contract. Three years afterwards B. renders an account of the cost of the stock, with interest to date, takes A.'s note at one year for the cost of enough stock to equalize their respective holdings, and gives a receipt for the note, reciting that "said note is given me for the purchase of 391½ shares \* \* \* now held by me, and to be delivered, upon payment of his note," to A. Shortly before maturity of the note, A. is notified that, if it is not paid at maturity, his right to the stock will not be recognized. The note is not paid at maturity, and B. destroys it. Nearly six years after date of receipt, A.'s assignee tenders to B. the amount due on note and demands stock. *Held*, that the title to stock did not vest in A., and that he did not pledge it to B. as security for payment of note, but that, by the terms of the receipt, B. retained the title until the purchase price should be paid; that the suit is for a specific performance of a contract, and not a bill to redeem; and that, by reason of the delay and changed condition of the parties and of the value of stock, specific performance must be denied.

In Equity.

Wm. Lindsay, for complainants.

A. P. Humphrey and St. John Boyle, for defendant.

BARR, J. Prior to November, 1873, Charles G. Davison and Alexander H. Davis were largely interested in the Louisville City

<sup>1</sup> Reported by Geo. Du Relle, Asst. U. S. Atty.