

by the interrogatories is wholly irrelevant to the issue, a serious difficulty arises. How can the court or master, without going into the whole case in advance of the hearing, determine whether the testimony sought is wholly irrelevant or not? A chancery case often presents difficult and complex questions and various issues. It frequently happens that one matter of evidence becomes necessary to rebut or explain some other matter of evidence coming incidentally into the inquiry. Counsel must necessarily, in filing interrogatories, anticipate testimony which his adversary's witnesses may give, and seek, by cross-interrogatories, to explain or rebut it. Hence the extreme—indeed, almost insuperable—difficulty of assuming to strike out interrogatories *in limine*. The safer course is to allow the interrogatory to be answered in any doubtful case, and determine the objections to it at the hearing, or in the progress of the cause, upon a motion to suppress. Nevertheless, it may occur that interrogatories may be propounded calling for testimony so clearly and manifestly foreign to the controversy that they ought to be rejected at the very threshold of the case. When such appears to be the case the court will not hesitate to make a reference to the master, with instructions to report whether any interrogatories to which specific objections are made call for answers manifestly irrelevant to the controversy. If any doubt exists as to the materiality of the testimony sought, the court will not interfere, but leave the party to his ordinary remedy by motion to suppress.

The defendant's motion is sustained, and the reference ordered, with the foregoing instructions. See *Cocker v. Franklin & Bagging Co.* 1 Story, Rep. 169.

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IRONS v. MANUF'RS NAT. BANK.

(District Court, N. D. Illinois. July 14, 1884.)

1. NATIONAL BANKING LAW—LIABILITY OF STOCKHOLDER—PURPOSE OF THE LAW.

It was the intention of congress by its act (Rev. St. § 5151) to make the excess of the cost of the stock of a national bank, up to the par value, an asset of the bank, to be resorted to in the event of insolvency, or a guaranty fund, (so to speak,) in case the property of a bank is insufficient to pay its debts. Whoever becomes a stockholder assumes this liability as an element of his contract.

2. SAME—LIABILITY OF PERSONS HOLDING STOCK IN A REPRESENTATIVE CAPACITY.

Section 5152, Rev. St., was designed to protect persons who hold stock in a representative capacity from any personal liability, and only makes the funds in the hands or under the control of such representative liable.

In Equity.

*Mason Bros.*, for plaintiff.

*H. B. Hurd*, for defendant.

BLODGETT, J. The principal facts which I deemed it necessary to consider for the disposition of the point now in question are these: William H. Adams was a shareholder in the Manufacturers' National Bank. In November, 1874, the bank suspended payment, closed its doors, and by a vote of the shareholders went into voluntary liquidation, being at that time largely indebted beyond its assets. Subsequently, James Irons, a judgment creditor, filed a creditor's bill, and obtained the appointment of a receiver to administer the assets of the bank. After the passage of the act of June, 30, 1876, in regard to winding up the affairs of national banks, a supplementary bill was filed, to which Adams was made a party for the purpose of enforcing the liability of the stockholders. Pending this proceeding against the shareholders Adams died, and a bill of revivor was filed against his administrator, and the latter demurs to the bill, on the ground that the liability of a shareholder of a national bank does not survive against his estate.

Section 5151 of the Revised Statutes provides that "the shareholders of every national banking association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such association, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares."

In support of his demurrer the administrator cites a large number of adjudged cases, chiefly from Massachusetts and Pennsylvania, where the contingent liability of shareholders for the debts of the corporation in which they held stock, under the special statutes of those states, was involved and considered; but it is noticeable that in most of the cases the question was either on the liability of the executor or administrator to pay calls or assessments on the stock of deceased stockholders, where it was clear that the stock would only be a burden to the estate; or in cases where the stockholder's liability was held to be in the nature of a penalty for some violation of the provisions of the statute regulating the affairs of the corporation. As I understand the able and exhaustive brief filed by the learned counsel for defendant, he concedes that if the liability of a shareholder of a national bank is to be construed as a contract obligation, then it survives as against the representatives of his estate.

So far as the clause of the national bank act which I have quoted has been construed by the court, it seems to me to have been assumed that it was the intention of congress to make this a contract liability. These cases are *Davis v. Weed*, 44 Conn. 569; *Hobbs v. Western Nat. Bank*, 9 Reporter, 469; *Davis v. Stevens*, 17 Blatchf. 259; *Laing v. Burley*, 101 Ill. 591. From all the various provisions of the act it seems to me that it was the intention of congress to make this liability to the extent of the par value of the stock, over and above what the stock had cost, an asset of the bank, to be resorted to in the event of insolvency, or a guaranty fund, so to

speak, in case the property of a bank was insufficient to pay its debts. Whoever became a shareholder assumed this liability as an element of his contract. He is declared individually responsible for the liabilities of the bank, to the extent of the amount of his stock at the par value thereof, and this responsibility attaches as soon as the relation of shareholder is assumed, and continues until the relation ceases. My view is that congress intended to give all persons dealing with the bank the guaranty or assurance of this shareholder's liability, for the purpose of giving credit to banks organized under this law. The capital paid in on the shares might be lost or wasted by fraud or bad management, but this additional shareholder's liability could not be wasted, but remains as a fund to be resorted to for the payment of debts when the other means of payment are exhausted; and it would certainly very much abridge this security if the liability of a shareholder is to cease with his death. It seems to me to be a liability which survives against the estate of a deceased shareholder, to the same extent as if the shareholder had, at the time he subscribed to or acquired his stock, signed a written agreement to pay an amount equal to the par value of the stock, on the debts or liabilities of the association, when called upon by the receiver of the bank to do so, and such an agreement undoubtedly would survive as against the representatives of the shareholder's estate.

Some stress is also laid in this case upon the succeeding section, which reads as follows:

"Sec. 5152. Persons holding stock as executors, administrators, guardians, or trustees, shall not be personally subject to any liability as stockholders; but the estate and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward, or person interested in such trust funds would be if living and competent to act and hold the stock in his own name."

I think the only purpose of this section is to protect persons who hold stock in a representative capacity from any personal liability, and only makes the funds in the hands or under the control of such representative liable. The object of this section undoubtedly was to encourage the investment of trust funds in this class of corporations by relieving the trustees from personal liability.

In this case I think the court can only adjudge the defendant to pay in due course of administration.

The demurrer to the bill is therefore overruled.

## COWELL v. LAMMERS and others.

Circuit Court, D. California. August 11, 1884.

## MINERAL LAND—ISSUE OF PATENT EXCEPTING—INTRUSION BY CLAIMANT—COLLATERAL ATTACK ON PATENT.

On June 27, 1867, under the acts of congress of July 1, 1862, and July 2, 1864, a patent, regular on its face, was issued for the N. E.  $\frac{1}{4}$  of section 17, township 9, range 9 E., Mt. Diablo base and meridian, to the Central Pacific Railroad Company, to aid in the construction of its road. The patent expressly excepted all mineral lands, should any be found within the tract conveyed, but there was nothing to indicate that any part of such land was mineral land. In 1873 the company conveyed the land to M., who entered into possession, occupied, fenced, built upon, and cultivated the land until 1877, when he sold it to C., who also went into possession and cultivated and used the land. In 1881 L. entered upon a part of the land, against the will of C., and, claiming that it was mineral land, took up a mining claim thereon. *Held*, that L. could not, by this unlawful intrusion, initiate a right to a mining claim, and that the patent was conclusive when collaterally called in question; following *Atherton v. Fowler*, 96 U. S. 513, and *Steel v. Smelting Co.* 106 U. S. 447; S. C. 1 Sup. Ct. Rep. 389.

## In Equity.

D. Johnson and W. H. Beatty, for complainant.

George G. Blanchard, for defendants.

SAWYER, J. This is a suit in equity to enjoin the defendants from committing a trespass in the nature of waste, in working a gold mine on the N. E.  $\frac{1}{4}$  of section 17, township 9 N., range 9 E., Mt. Diablo base and meridian. The quarter section is a part of a section designated by an odd number within the limits of the grant made by congress to the Central Pacific Railroad Company, to aid in the construction of said company's road, by the act of July 1, 1862, (12 St. 489,) as amended by the act of July 2, 1864, (13 St. 356.) The road having been completed in accordance with the provisions of said acts of congress, a patent in the usual form was issued to the Central Pacific Railroad Company on June 27, 1867. The granting clause of the patent is as follows:

"Now know ye, that the United States of America, in consideration of the premises, and pursuant to the said acts of congress, have given and granted, and by these presents do give and grant, unto the said Central Pacific Railroad Company of California, and to its assigns, *the tracts of land situated as aforesaid and described in the foregoing, yet excluding and excepting from the transfer, by these presents, 'all mineral lands,' should any such be found to exist in the tracts described in the foregoing; but this exception and exclusion, according to the terms of the statute, shall not be construed to include coal and iron land.*

"To have and to hold the said tracts, with the appurtenances, unto the said Central Pacific Railroad Company of California, and to its assigns, forever, *with the exclusion and exception as aforesaid.*"

On March 13, 1873, the Central Pacific Railroad Company duly conveyed the said quarter section, with other lands, to Daniel Mc-