

issued and accepted. The decree asked for in this bill would afford no relief whatever without other and independent proceedings at law. It would simply keep the money in the treasury. No decree for the payment of the money could be made, because a judgment against the city, at law, would be ample for that purpose where a judgment could be had, and no such decree is asked. But, in the case of these bonds, it was held in *Kennedy v. Sacramento, supra*, that a judgment at law against the city could not be obtained under the statute. For the same reasons, no decree in equity could be had, even if the court had jurisdiction in other respects to enter such a decree. But it has none, as the remedy, if any, would be a judgment at law. The decree asked does not appear to be ancillary to any proceeding at law now pending, or even contemplated, to obtain the money if retained in the treasury. But if it is the duty of the treasurer to pay these coupons out of the funds alleged to be in the treasury, the most direct, speedy, and effective way to obtain payment is by *mandamus* in a court of law. This remedy is complete and adequate. It would not only prevent the money from being diverted to other purposes,—all that this bill seeks,—but would secure the payment of the overdue coupons held by complainant, and be, in itself, a full and adequate remedy, while that sought in this bill could only be ancillary to some other remedy in a court of law, to which complainant would be driven at last.

The bill, in my judgment, presents no case of equitable cognizance. The preliminary injunction must be denied, the demurrer to the bill sustained, and the bill dismissed; and it is so ordered.

PRICE, Receiver, v. COLEMAN and others.

(Circuit Court, D. Massachusetts. September 3, 1884.)

1. EQUITY—PLEADING—MULTIFARIOUSNESS—ACTION BY RECEIVER OF NATIONAL BANK.

Where a bill, brought by the receiver of a national bank against all of the directors holding office during the existence of the bank, the legal representatives of deceased directors, and the cashiers of the bank, joins claims for losses suffered by the bank by reason of the directors' negligence and inattention, and claims for losses suffered by the stockholders by reason of having been induced to subscribe for new shares by misrepresentations of the directors, it is multifarious.

2. SAME—CERTAINTY—DEMURRER.

Where such a bill does not state the dates of the losses sustained by the corporation, nor the dates of the acts or omissions contributing to those losses, with sufficient certainty to inform each of the defendants with which and how many of the losses it is sought to charge him, it is demurrable.

In Equity.

A. A. Runney and J. R. Clark, for complainant.

E. R. Hoar, Henry Baldwin, J. W. Richardson, Sherman & Bell, Richard Stone, Geo. F. Williams, Jesse F. Wheeler, Joseph Cutler, Morse & Allen, and Brooks & Nichols, for defendants.

Before GRAY and NELSON, JJ.

GRAY, Justice. To the bill in its present shape the demurrers for multifariousness and for uncertainty are well taken. The bill is clearly multifarious in joining claims for losses suffered by the corporation by reason of the directors' negligence and inattention, and claims for losses suffered by the stockholders by reason of having been induced to subscribe for new shares by misrepresentations of the directors. The bill, brought against all those who were directors during various periods of time, does not state the dates of the losses sustained by the corporation, nor the dates of the acts or omissions contributing to those losses, with sufficient certainty to inform each of the defendants with which and how many of the losses it is sought to charge him. The bill must be amended, in these respects, at least, before the court can justly or intelligently determine, as between the complainant and the several defendants, whether the bill is multifarious in joining as defendants those who were directors at different times; whether it sets forth a liability upon which the complainant can maintain a bill in equity; and whether it sets forth a cause of action which survives against representatives of deceased directors.

Demurrers sustained, with costs; leave to amend the bill.

HENDERSON *v.* CENTRAL PASSENGER RY. CO.¹

CENTRAL PASSENGER RY. CO. *v.* LOUISVILLE CITY RY. CO.¹

(Circuit Court, D. Kentucky. July 22, 1884.)

1. FRANCHISE—RAILROAD CORPORATION—CONSTRUCTION OF GRANT—MOTIVE POWER.

A legislative grant to the Louisville & Portland Railroad Company of a franchise to build and operate a railroad from Louisville to Portland, along such streets as the city council should consent to, with power to use passenger and burden cars, to furnish means of transportation, to charge tolls for passengers and freights, and "to do and perform every act and thing necessary and proper to carry into effect the provisions of that act and promote the design of the corporation," but without specifying what motive power should be used, authorized the city council to limit the power to be used to horse-power.

2. CORPORATION—SALE OF FRANCHISE—WHAT PASSES THEREBY—REPEAL OF FRANCHISE—CONSTITUTIONALITY.

The Kentucky act of February 14, 1856, provided that all privileges and franchises thereafter granted to corporations should be subject to amendment or repeal at the will of the legislature. The L. & P. R. Co. had theretofore been incorporated, and under its charter had built and operated a street railroad on Bank street. Thereafter, in 1866, the Citizens' P. Ry. Co. was incor-

¹ Reported by Geo. Du Relle, Asst. U. S. Atty.