

against a corporation outside of the state where it exists in the first instance, the litigation should be limited to such contracts as are made at the place where the suit is commenced. But, as the statute now is, if the corporation is found here for the purposes of any suit, it is found for the purposes of all suits. It seems to me, within the purview of the statute, that wherever a railroad corporation has established an agency, where it has an office, an agent directly employed by it for the transaction of its business, (and that is not limited to the mere business of running its road, carrying freight and passengers, but includes any transactions or contracts with the view of increasing or furthering such regular business,) in such case it is found within the district. I do not think the section referred to by counsel as to the jurisdiction of the circuit court, in a state in which there are two districts, has any application to this case, for here the defendant is a corporation of another state, and therefore not any more a resident of one than the other district in this state. The plea to the jurisdiction will be overruled.

BISCHOFFSHEIM v. BALTZER and others.

(Circuit Court, S. D. New York. September 9, 1884.)

PRINCIPAL AND AGENT—INTEREST ON MONEY RETAINED BY AGENT—RATE OF INTEREST—LAW OF PLACE.

Money, voluntarily left by a principal in the hands of an agent, lies without interest until some request for it or occurrence changes the character of the detention; but when the detention is against right, interest from the time when the money should have been paid to the principal, at the rate fixed by the law of the place where it is detained, is chargeable to the agent.

In Equity.

Joseph H. Choate, for orator.

Chas. M. Da Costa, for defendants.

WHEELER, J. There having been an order for a decree setting aside the basis of a charge by the defendants to the plaintiff of \$63,125, in an account current, as paid for \$100,000 North Carolina state bonds which proved to be void, and for a resettlement of the account, several questions have been made as to carrying out the decision made. *Bischoffsheim v. Baltzer*, 20 FED. REP. 890. As this is the only item open, it can be adjusted on its own merits, and the balance due ascertained without reference to a master, so far as appears to be claimed.

Firstly, this charge was made following sales of gold made by the defendants for the plaintiff, and the proceeds credited to a larger amount than this charge, so that gold furnished by the plaintiff may be said to, in effect, have paid for the bonds. It is urged, if the ar-

gument is understood, that on setting aside the charge the plaintiff is entitled to what would replace so much of the gold as would balance the charge. There would appear to be much plausibility in this claim if the transaction had been that the defendants swapped the bonds to the plaintiff for the gold. But in fact the plaintiff made no trade with the defendants for the bonds. The defendants charged the plaintiff so much as paid out for the bonds. The plaintiff, supposing that the money was actually so paid, let the charge stand for the amount. The other transactions were separate from this, and would have taken place if this had not. This charge did not increase or diminish the amount of gold bought or sold. It diminished the plaintiff's credit with the defendants exactly as much in money as the amount of the charge. Exactly that amount of money would have made the plaintiff whole in respect to this charge, at that time. The amount is the same now, unless interest is to be added.

The account shows that interest on balances was carefully computed from time to time covering this period. By the making of this charge the plaintiff lost the interest on its amount to the closing of the account. Had the charge not been made, his interest would have been enough more, and the defendants' enough less, to amount to that. So, by understanding and contract, the plaintiff is entitled to interest on the item, or rather on the amount which balanced it, unless there is something in the transaction and what followed to repel such allowance. There is no doubt, probably, but that, as claimed for the defendants, money voluntarily left by a principal in the hands of an agent lies without interest until some request for it, or occurrence, changes the character of the detention. Neither does there appear to be any question but that whenever the detention is against right interest follows. *Stone Cutter Co. v. Windsor Manufg Co.* 17 Blatchf. 24.

The question here is as to the character of this detention. The void bonds were the defendants' bonds. There was no sale from the defendants to the plaintiff. The plaintiff had the right to treat the transaction as a sale to his firm when he knew what it was, but never has done so. The defendants kept the money themselves, as the price of their bonds, and represented that they paid it to others for the purchase of others' bonds. They had the bonds all the while. They detained the money against the right of the plaintiff all the while, but he did not know it. His right did not accrue with his finding out; he found out a right already accrued. When he found out his right, he might, it is true, have waived it; but his failure to waive it did not create it, but saved it. It appears to have been saved as it was in the beginning, and as it would have been if it had been asserted then,—a right to the money which the charge met, with interest. The money was detained in New York, and the law there as to the rate of interest must govern. *Ekins v. East India Co.* 1 P. Wms. 396. This seems to be settled at 7 per cent. while the legal rate

was 7, and at 6 while the legal rate was 6, by the decisions of the highest court of the state. *Reese v. Rutherford*, 90 N. Y. 644; *Sanders v. L. S. & M. S. Ry. Co.* 94 N. Y. 641; *O'Brien v. Young*, 95 N. Y. 428. It is suggested that objections to evidence should be passed upon formally before entry of decree; but there is no motion to suppress testimony, nor any question raised by objection that the decision of would be controlling upon any principal point. There is no occasion to pass upon such questions in detail.

Decree entered accordingly.

NEW CASTLE NORTHERN RY. CO. v. SIMPSON.

(Circuit Court, W. D. Pennsylvania. August 13, 1884.)

1. RAILROAD COMPANY—CONTRACT ULTRA VIRES—RESCISSION—PART PERFORMANCE.

A court of equity, upon a bill filed by a corporation, will rescind a contract still executory into which it has entered, where the same is *ultra vires* and against public policy, although all the stockholders may have either expressly assented thereto or acquiesced for a season therein, and in its partial execution by the other party.

2. SAME—CONSTITUTION OF PENNSYLVANIA—CONTRACT TO CONSTRUCT RAILROAD.

The constitution of the state of Pennsylvania provides that "no corporation shall issue stocks or bonds except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void." An incorporated railroad company of that state entered into a construction contract whereby the contractor agreed to furnish all the materials and do all the work necessary to construct the company's road, at an expenditure, however, not exceeding \$200,000; and in consideration thereof the company agreed to issue to the contractor \$300,000 of its capital stock as fully paid up, and \$300,000 of its first mortgage bonds. The materials could be furnished and the road built for \$180,000 cash. *Held*, that the contract contravened the constitutional provision, and was *ultra vires* and void.

3. SAME—PENNSYLVANIA STATUTES OF APRIL 4, 1868, AND APRIL 18, 1874.

The act of assembly of April 4, 1868, limits the amount of a railroad company's construction mortgage bonds to the amount of the capital stock subscribed, and authorizes the issue of such bonds in amounts not exceeding double the amount actually paid up of the capital stock subscribed; and the act of April 18, 1874, forbids any corporation to increase the amount of its indebtedness beyond the amount of its capital stock subscribed, until the amount of its capital stock subscribed shall be fully paid in. *Held*, that the performance by the railroad company of its said contract involved a violation of these statutory provisions, it appearing that no part of its subscribed capital stock, which was \$250,000, had been paid in.

4. SAME—PART PERFORMANCE BY CONTRACTOR—COMPENSATION.

Before the bill was filed the contractor had entered upon the work of construction, and he has expended upwards of \$40,000. *Held* that, while the contract must be rescinded as one which the corporation had no lawful power to make or perform, yet the rescission should be upon terms securing to the contractor just compensation, his conduct being free from actual bad faith

In Equity.

R. B. McCombs, Frank Whitesell, and J. B. Brawley, for complainant.