

In *Sturgis v. Morse*, 26 Beav. 562, the master of the rolls said:

"I apprehend that evidence given for any defendant is evidence for the whole cause, and that the plaintiff may make use of it, both in argument or comment. I have known it done repeatedly, and I think that the evidence in the cause may be made use of by the plaintiffs against the defendants, and by the defendants against the plaintiffs."

Upon principle and authority, therefore, I think that this testimony, taken in accordance with the stipulation of the parties, should be filed in the clerk's office. The fees of the commissioner should, however, be paid by the defendants before the testimony is filed,—the question as to which party shall ultimately pay them being left for future decision; but at present the defendant, desiring the use of the testimony, should pay the fees. *Frese v. Biedenfeld*, 14 Blatchf. 402. As I understand counsel are ready to file the testimony, or cause it to be filed, if so decided, no order will be made at present.

DODGE v. FULLER *et al.*

(*Circuit Court, W. D. Michigan, S. D. March 27, 1880.*)

MORTGAGES—REDEMPTION BY JUNIOR MORTGAGEE.

Under Comp. Laws Mich. 1871, § 6922, which provides that, in case mortgaged lands are redeemed after sale, the deed given on the sale shall be void and of no effect, a junior mortgagee, who redeems after sale, will be treated as an assignee of the prior mortgage, and entitled to interest at the rate per cent. which that mortgage bore, and not as the holder of an equitable lien for the money paid, with legal interest only.

In Equity. Suit to foreclose a mortgage.

WITHEY, J. The bill in this cause was filed to foreclose a mortgage made by the defendant Hettie Fuller to the complainant's assignee, William P. Hall, and also a certain mortgage executed by the same defendant to John Marley, and from which the complainant was compelled to redeem, for his protection, after a sale had been had upon foreclosure proceedings, instituted by advertisement under the statute. The complainant claims that this redemption put him in position of assignee of the mortgage, and it becomes necessary to determine whether the position taken by complainant is correct, as, if he is entitled to enforce the mortgage as assignee, he will be entitled to interest at the rate per cent. which the mortgage bore, viz., 10 per cent.; while if, on the other hand, he is simply entitled to an equitable lien for the money paid on redemption, he must content himself with the legal rate of interest, as equity cannot go so far as to make a contract for the parties, fixing the rate of interest. There is no question that, had the redemption occurred before any proceedings were had to foreclose the mortgage given to Marley, the complainant would have become in equity the assignee of such mort-

gage. Jones, Mortg. § 1086; *Mattison v. Marks*, 31 Mich. 421. It remains to be determined whether any different rule obtains where proceedings to foreclose have been taken, which have not terminated in a complete foreclosure by the expiration of the equity of redemption. Section 6922, Comp. Law 1871, provides, in effect, that in case of redemption after sale the deed given on the sale shall be void and of no effect. We think that the effect of the redemption by complainant was to annul the sale, and that, as the complainant was under no obligation to pay the mortgage, such payment will not in equity be treated as operating to discharge the same, but that, as in case of redemption before any proceedings to foreclose are taken, he will be treated as assignee of the mortgage lien. It follows that he will be entitled to interest upon this mortgage at the rate of 10 per cent.

Let a decree be entered in accordance with these views.

GLOVER *et al.* v. BOARD OF FLOUR INSPECTORS.

(Circuit Court, E. D. Louisiana. December 13, 1891.)

1. INJUNCTION—DOUBTFUL QUESTION—DEMURRER.

A bill sought to enjoin an inspection of flour about to be made under Laws La. Ex. Sess. 1870, p. 156, upon the ground that the statute was unconstitutional because the inspection provided for was confined to flour coming to New Orleans "for sale," thus discriminating in favor of those who bought for their own use, and in favor of resident merchants, as against merchants residing in other states, contrary to the interstate commerce clause of the federal constitution. *Held*, that as the question was a doubtful one, and it seemed probable that the court would be aided by proof of the manner in which the statute operated, a demurrer to the bill would be overruled.

2. CONSTITUTIONAL LAW—INTERSTATE COMMERCE.

The fact that the statute applied only to the port of New Orleans, and that no penalty was provided for its violation, were matters for the consideration of the legislature alone, and did not go to the question of its validity under the federal constitution.

In Equity. Suit for injunction by Booth F. Glover and others against the board of flour inspectors of New Orleans. On demurrer to the bill. Demurrer overruled.

W. W. Howe, for complainants.

W. H. Rogers, Atty. Gen., for defendants.

BILLINGS, J. The question in this case is presented by a demurrer to an injunction bill in equity. The plaintiffs are dealers in flour. The defendants are inspectors of flour. The bill is aimed at the statute under which the defendants are appointed. The question is whether, under the constitution of the United States, that statute is an unauthorized interference with, or an unwarranted regulation of, interstate and foreign commerce. That statute is found in No. 71 of the Acts of the Extra Session of 1870, at page 156. The statute is entitled "An act to amend and re-enact an act entitled 'An act to establish a board of flour inspect-

ors for the city and port of New Orleans, approved March 28, 1867, and numbered 159," (Acts 1867, p. 297.) That statute authorized the governor, with the advice and consent of the senate, to appoint a board of flour inspectors of the city and port of New Orleans. They are required to inspect all flour imported or coming to the port of New Orleans for sale, solely for the purpose of ascertaining its purity and soundness, and whether of lawful weight, but not for the purpose of classification and grading. They are to brand each barrel of sound and full-weight flour, and not to brand any other flour; such examination to be on the levee or in the warehouse, as the receiver may elect. It is declared not to be lawful to sell any flour as sound and merchantable unless the same is branded. The fee of the inspector is fixed at two cents per barrel.

The incompleteness of this statute, in that it provides for no examination of flour which shall come into any other port of Louisiana than the city or port of New Orleans, and its inefficiency as a means of securing sound, pure, and full-weight flour, in that it imposes no penalty, and simply makes it "unlawful to sell flour as sound and merchantable unless it has on it the official brand," are manifest. These imperfections could be considered by the legislature of the state alone. The grave objection to the statute is that it applies only to flour imported or coming to the city of New Orleans "for sale." The citizen of Louisiana, bringing in either from another state or from abroad flour for his own use or consumption, need have no inspection,—need pay no tax. The citizen of Missouri, or any other state, who brings in his flour for sale, must have inspection and must pay a tax. Does this statute create such an inequality, either in its terms or by its necessary operation, as brings it within the line of unconstitutional laws, as defined and expounded in the case of *Brimmer v. Rebman*, 138 U. S. 78, 82, 11 Sup. Ct. Rep. 213, and the cases there referred to? This is a question not easy to determine. It is a question most proper for the supreme court. It is possible that the proofs which will be offered as to the manner in which the law was enforced may aid this and the appellate court in the consideration of the case. The circuit judge, when he granted the injunction, seems to have dealt with the question guardedly, and required a bond which will amply protect the defendants until the end of the litigation, in case the injunction should, in the court of last resort, be dissolved, or, if the bond already given is not ample, application may be made for a further bond. The argument for the validity of the statute of 1870 comes from the reservation in the constitution to the states to impose taxes absolutely necessary for the execution of inspection laws, (article 1, § 10, par. 2;) for, while aimed at protecting only the pocket of the community, and not at the protection of its health, and imperfect as to locality, and inefficient, because lacking sanctions or penalties, it is nevertheless, in form and by designation, an inspection law. On the other hand, there is the argument that the statute, in substance and necessary operation, while laying a burden upon interstate commerce, lays it unequally upon the domestic citizen and the importer who is a citizen of another state. On the whole, I am of the opinion that I should overrule the demurrer, and let the stat-

ute, and such facts as the proof may establish as to the necessary operation of the statute, come before the court to be dealt with upon the final hearing and in the appellate court.

In re CENTENNIAL BOARD OF FINANCE.

(Circuit Court, E. D. Pennsylvania. June 29, 1891.)

DISSOLUTION OF CORPORATION—DIVISION OF ASSETS.

"A body corporate," incorporated by act of congress, having certain specified duties to perform, and required by the act "to convert its property into cash, and to divide, after the payment of all liabilities, the remaining assets among the stockholders, will not be relieved from this duty on the ground of the smallness of the dividend or the difficulty of distribution.

In Equity.

Petition of Thomas Cochran, John S. Barbour, Frederick Fraley, William Sellers, Clement M. Biddle, N. Parker Shortridge, James M. Robb, Edward T. Steel, John Wanamaker, Amos R. Little, Thomas H. Dudley, Edwin H. Fidler, William V. McKean, John Baird, Henry D. Welsh, W. W. Justice, Joel J. Bailey, John Cummings, John Gorham, Abram S. Hewitt, William L. Strong, John B. Drake, George Bain, and A. T. Goshorn, officers and directors of the Centennial Board of Finance, setting out that it had fully discharged its duties; that it had on hand two funds, one \$4,960.03, the amount still unclaimed from two dividends, and a general fund, \$8,630.87. This latter fund would pay a dividend of between two and three cents a share. The shares were widely scattered. Prayer that the petitioners be relieved from further custody of the fund, and that the court should appoint a suitable custodian of it, after certain payments had been made. The Centennial Board of Finance was incorporated by act of congress of June 1, 1872, as "a body corporate, to be known by the name of the 'Centennial Board of Finance,'" and section 10 of the act provided:

"That as soon as practicable after the said exhibition shall have been closed it shall be the duty of said corporation to convert its property into cash, and, after the payment of all its liabilities, to divide its remaining assets among its stockholders *pro rata*, in full satisfaction and discharge of its capital stock. And it shall be the duty of the United States Centennial Commission to supervise the closing up of the affairs of the said corporation, to audit its accounts, and submit, in a report to the president of the United States, the financial results of the Centennial Exhibition."

S. S. Hollingsworth and Thos. Dudley, for petitioners.

BUTLER, J. The petitioners are not ordinary trustees, but the officers of a corporation, with active duties to perform as such. The distribution of the moneys in their hands is provided for by the statute out of which the corporation grew. The petitioners are required to divide it