

THOMSON v. BEAL.

(Circuit Court, D. Massachusetts. January 14, 1892.)

EVIDENCE—WRITTEN CONTRACT—CONTEMPORANEOUS WRITING.

A person depositing money in a bank accepted from the cashier a certificate of deposit, which made no mention of interest, but with a verbal agreement that interest should be paid. The cashier at the same time indorsed a memorandum of the rate of interest on the stub from which the certificate was taken. *Held*, that the stub should be read with the certificate, as evidence of the entire contract.

In Equity. Suit by Elihu Thomson against Thomas P. Beal, as receiver of the Maverick National Bank, to recover interest on a certificate of deposit. Heard on demurrer to the complaint. Overruled.

Simon Davis, for complainant.

Hutchins & Wheeler, for defendant.

COLT, J. This demurrer raises the question whether the defendant shall pay the complainant interest upon a certain certificate of deposit. From the allegations in the bill, it appears that the complainant, on September 16, 1886, deposited in the Maverick National Bank, of which the defendant is receiver, the sum of \$4,800, and received a certificate of deposit as follows:

MAVERICK NATIONAL BANK.

\$4,800.00.

BOSTON, Sept. 16, 1886.

Elihu Thomson has deposited in this bank forty-eight hundred dollars, payable to the order of himself on return of this certificate properly indorsed.

A. C. JORDAN, Teller.

E. H. LOWELL, Asst. Cashier.

No. 33,455.

At the time of the deposit and receipt of the certificate, the cashier agreed verbally to pay the complainant interest at the rate of 2½ per cent. per annum upon the return of the certificate properly indorsed, and at the same time the cashier made a memorandum of the agreement on the stub or margin of the book from which the certificate was taken, as follows:

| | | |
|-----------------------------|-----------------|-------------|
| Date, | Sept. 16, 1886. | \$4,800.00. |
| Deposited by Elihu Thomson. | Order of | |
| 2½% | | No. 33,455. |

The general legal proposition advanced by the defendant in support of the demurrer, that parol evidence cannot be introduced to contradict or vary the terms of a written agreement, is well settled, and requires no citation of authority.

But the question here presented is whether the certificate of deposit, which does not in express terms mention any interest, is to be considered as alone representing the entire contract in writing, or whether such certificate should not be taken in connection with the written memorandum made at the time on the stub of the bank's book from which the certificate was taken. In taking both writings together as constituting one contract, we are not seeking to add to or vary the terms of a written

contract by parol evidence, but we are simply seeking to discover what the contract actually was, as exhibited in writing made at the time. I understand the rule to be that all contemporaneous writings relating to the same subject-matter, while the controversy exists between the original parties or their representatives, are admissible as evidence, and that extrinsic evidence is admissible to show which paper expresses the real intention and agreement of the parties. *Payson v. Lamson*, 134 Mass. 593; *Hunt v. Livermore*, 5 Pick. 395. The defendant argues that the writing on the stub was a mere private memorandum made by the cashier for his own convenience. There is no allegation in the bill to this effect. The bill alleges that, at the time the certificate was given, "said cashier made a memorandum thereof by making, or causing to be made, the figures 2½ per cent. on the stub or margin of the book from which said certificate was taken." In a certain sense, the stub and the certificate cut from it may be said to constitute but one writing; at all events, in my opinion, both may be consulted in order to ascertain what was the real contract between the parties. Demurrer overruled.

WEIDENFELD v. SUGAR RUN R. Co. et al.

(Circuit Court, W. D. Pennsylvania. January 7, 1892.)

1. RAILROAD COMPANIES—DUTIES OF DIRECTORS—DELEGATION OF POWER—LOCATING ROUTE.

Under Act Pa. Feb. 19, 1849, imposing upon the president and directors of a railroad company the duty of locating its road, this duty cannot be delegated to an executive committee appointed under the by-laws to have "general supervision of the operations and policy of the company," with power to authorize its officers to execute "such contracts and agreements" as the committee may deem expedient; and a location made by such a committee is void, as against a subsequent location on the same ground by the directors of another company having the right of eminent domain.

2. SAME—EMINENT DOMAIN—PRIVATE USE.

A railroad to be built solely for the private use of the controlling stockholder in conveying tan-bark from a certain tract of land to his mills is not entitled to exercise the right of eminent domain, though the company is organized under Act Pa. April 4, 1868, which provides for the formation and regulation of public railroad companies.

3. SAME—JURISDICTION OF FEDERAL COURTS.

Act Pa. June 19, 1871, provides that when it is alleged that the private rights of individuals or corporations are injured by any corporation claiming a franchise to do the act from which the injury results, the court may inquire whether such corporation does in fact possess such franchise, and, if it does not, may enjoin it from committing the injurious acts. *Held*, that this equitable right may be administered in a federal court, by inquiring whether a corporation organized under the general railroad law is not intended for a purely private purpose.

4. SAME—RIGHTS OF STOCKHOLDERS.

A stockholder of a railroad company which has located and partially constructed its line may maintain a bill to enjoin a rival company from appropriating this work to its own use, when he shows that the directors of his own company are acting in sympathy with the rival company, have furnished it with knowledge of certain defects which render their own location invalid, and have refused to resist such appropriation.

In Equity. Bill by C. Weidenfeld against the Sugar Run Railroad Company and others to restrain that company from appropriating the