THURBER *et al. v.* CECIL NAT. BANK *et al.*

(*Circuit Court, D. Maryland.* October 15, 1892.)

1. EQUITY—PLEADING—JURISDICTION—BILL OF DISCOVERY—OTHER RELIEF.
A bill filed as a bill of discovery, but containing a prayer for other specific and general relief, showed that certain goods pledged to complainants were stored in warehouses by their agent, who took storage receipts in his own name as "agent," and afterwards pledged them to defendant bank for his own benefit. *Held* that, whether or not the bill was sufficient as a bill of discovery, the facts alleged made a case cognizable in equity, since they showed that the goods were apparently impressed with a trust, and that there had been a breach of the trust participated in by the bank.

2. DEPOSITIONS—RE-EXAMINATION OF WITNESS BY CONSENT.
The taking of testimony before a master was protracted and desultory because of the sickness and death of counsel, and of difficulty in obtaining the attendance of witnesses, and, by consent of parties, many orders were obtained enlarging the time for taking testimony, and other orders for admitting testimony taken out of time as if orders for enlargement had been made. *Held*, that such orders could not be considered as an agreement to admit inadmissible testimony thus taken, and that one of the consenting parties could still invoke the rule requiring the suppression of depositions taken on the re-examination of witnesses who had been once examined and cross-examined as to the same matters, unless an order for such re-examination had been first obtained for cause shown.

3. PRINCIPAL AND AGENT—MISCONDUCT OF AGENT—RIGHTS OF THIRD PERSONS—NOTICE.
An agent, pursuant to the order of his principal, loaned money on a pledge of personal property, taking warehouse receipts therefor in his own name as "agent," which he pledged to secure his individual debts to a bank having knowledge of the business relations of the principal and agent and the operations in which they were engaged. *Held*, that this knowledge, together with the use of the word "agent" on the receipts, was sufficient to put the bank upon inquiry, and it was liable to the principal for the amount realized by it from the sale of the goods so pledged.

4. SAME—POWER TO SELL—PLEDGE.
The fact that the agent had power to sell for his principal did not affect the duty of the bank to make inquiry, for authority to sell does not include authority to pledge.

5. SAME—STORAGE CERTIFICATES—RIGHT TO PLEDGE.
The Maryland factors' act, (Code, art. 2,) providing that any person intrusted with storekeepers' certificates or other similar documents showing possession may pledge the goods to anybody who is without notice that such person is not the actual owner, does not excuse the bank from liability, for the word "agent" and the circumstances charged it with notice.

6. SAME.
Md. Code, art. 14, declaring storage receipts to be negotiable instruments in the same manner as bills of lading and promissory notes, does not excuse the bank from liability; for, when the fiduciary character of the holder is expressed on the face of a negotiable instrument, notice is thereby given to the indorsee that the holder *prima facie* has no right to pledge.

7. SAME.
The agent took certain money due his principal, made advances to third parties, and purchased goods therewith, which he warehoused in his own name as agent, thereafter pledging them to the bank by transfer of the storage receipts. He never intended his principal to have these goods. *Held*, that the title to such goods was never in the principal, and that the bank was not liable for the amounts advanced on them.

8. SAME—LACHES.
The principal heard that goods which he suspected might be his were being sold by direction of the bank, but did not notify it of his claim until four months afterwards. During this period the bank had paid over to the agent certain sums remaining after the satisfaction of its loans, and claimed that the principal was guilty of laches. It did not appear, however, whether these sums were realized from the goods owned by the principal or from those owned by the agent. *Held*, that there was no presumption that they were the principal's goods, and the delay would therefore not defeat his right of recovery.

In Equity. Bill by H. K. & F. B. Thurber & Co. against the Cecil National Bank, Jacob Tome, president, and A. M. Hancock. Decree for complainants.

Thomas G. Hayes, for complainants.

Robert H. Smith and *Peter E. Tome*, for Cecil Nat. Bank.

MORRIS, District Judge. This is a bill filed as a bill of discovery, in which the complainants, citizens of New York, allege that Hancock was their agent to advance money to the packers of canned tomatoes in Harford county, Md., upon the security of the canned goods; that the warehouse receipts for the goods upon which they so loaned money were made out in the name of A. M. Hancock, agent, and afterwards, without authority from them, Hancock pledged the goods to the defendant bank, by indorsing the warehouse receipts to it for loans obtained from the bank for his own use. It is alleged that the officers of the bank knew, or had reason to know, that the complainants were the principals for whom the goods were warehoused in the name of A. M. Hancock, agent, and, in taking the warehouse receipts as security for his own debt, they acquired no title to the goods. The prayer of the bill is for a discovery of the details of a large number of transactions in which goods were so pledged, and for the delivery up of the goods in the bank's possession, and an account of those sold by its orders, and for other and further relief.

It is objected on behalf of the defendant bank that the bill and testimony do not disclose a case proper for a bill of discovery, for the reason that all the knowledge sought by it the complainants either already had, or could have obtained by the ordinary processes and practice of courts of law. I do not find it necessary to determine this somewhat difficult question; for, independently of discovery as a ground of relief, it does clearly appear from the allegations of the bill and from the testimony that the goods in controversy are goods which had been pledged to the complainants, and which in their behalf the defendant Hancock had placed in warehouses, taking the storage receipts in his name as agent, and that his pledging of them to the bank was a breach of trust, in which the bank participated. Such a breach of trust as is alleged in the bill presents a case of equity jurisdiction very frequently recognized. *National Bank* v. *Insurance Co.*, 104 U. S. 54; *Duncan* v. *Jaudon*, 15 Wall. 165; *Warner* v. *Martin*, 11 How. 225; *Taliaferro* v. *Bank*, 71 Md. 208, 17 Atl. Rep. 1036; *Lowry* v. *Bank*, Taney, 310; *Shaw* v. *Spencer*, 100 Mass. 382; *Dillon* v. *Insurance Co.*, 44 Md. 386. Upon the ground, therefore, that the allegations of the bill disclose that the goods in controversy were deposited in the name of Hancock, agent, and therefore apparently impressed with a trust, and that the dealings between Hancock and the bank amounted to a breach of that trust, I think sufficient appears to give a court of equity jurisdiction, without discussing the sufficiency of the bill as a bill of discovery.

Another preliminary question raised by the bank is the admissibility of certain testimony taken before the master. At the hearing, excep-

tions were filed, and a motion made to exclude so much of the testimony of the defendant Hancock and of Alexander Wiley as was taken upon their re-examination, after having been once called, examined, cross-examined, and dismissed, upon the same subject-matter, and upon the ground that no order of court was first obtained for such re-examination. It is urged by the complainants that the re-examination was by consent of the objecting parties. By reason of difficulties in obtaining the attendance of witnesses, and by reason of the illness and death of the original counsel for the bank, and the illness and death of the original counsel for the complainants, the examination of witnesses before the master was protracted and desultory, and the time for examining witnesses on both sides was frequently enlarged by orders of court upon consent of the parties, and orders were obtained by which testimony was agreed to be admitted as if the orders enlarging the time had previously been obtained; but all these orders and agreements had reference solely to enlarging the time, and not to the admissibility of the testimony, and had no reference to any objections except those growing out of lapse of time. I think the objection urged by the exceptions comes entirely within the salutary rule that the depositions of witnesses previously examined as to the same matters will be suppressed, unless an order of court for cause shown has been first obtained for the re-examination, in which the terms on which the leave is granted and the interrogatories proper to be asked are specially settled. 3 Greenl. Ev. § 336; *Trustees, etc.*, v. *Heise*, 44 Md. 465; *Girault* v. *Adams*, 61 Md. 1. The objections to these portions of the testimony are sustained, and they will not be considered.

The testimony properly before the court shows that Hancock, residing in a village in Harford county, in 1883, and for some years prior thereto, acted as a broker for the sale of canned goods canned by the farmers and packers in that county, and also for the sale of supplies required by the packers. In 1882 and 1883, as a broker, he negotiated sales from the complainants, who were merchants doing business in New York city, to Harford county packers, for cans, solder, and canning tools, for a commission. He also, for a commission, placed for the complainants, in the hands of certain packers, cans to be filled with tomatoes, at an agreed price, and then shipped to the complainants. He also negotiated some sales of canned goods to the complainants on behalf of the county packers. When the packers who had purchased supplies from complainants were unable to meet the notes given in payment, he appears occasionally to have negotiated discounts for such packers at the defendant bank, becoming indorser on their notes. He was, however, known to the bank officers to be a man of no capital and very little credit. Early in the tomato packing season of 1883, Hancock suggested to the complainants that as the price of canned tomatoes was very low, and the packers were anxious to hold on to their goods for better prices, the complainants might get the control of the selling of a large amount of these goods packed in Harford county, if they would make liberal advances of money to the packers on pledge of the goods; that the complainants would get interest on their money and a commission of 5 per cent. for selling, of which com-

mission they were to pay Hancock a share for his services. To this arrangement the complainants consented, and agreed to advance from 70 to 75 cents a dozen on three-pound cans of tomatoes stored in warehouses in their names, with insurance payable to them.

In pursuance of this agreement, the complainants furnished Hancock with large sums of money, which he deposited in the defendant bank in October, 1883, in the name of A. M. Hancock, agent, he having previously had an account there in the name of A. M. Hancock & Co. These sums so furnished and deposited in October, November, and December, in 1883, amounted to over $93,000, and were loaned out through Hancock's agency to numerous packers; their notes for the loans to the order of the complainants, together with the warehouse receipts in complainants' names, being forwarded by Hancock to the complainants. The anticipated rise in the price of canned tomatoes did not take place, and they came to be worth hardly anything more than the amounts advanced upon them, and for this and other reasons the loans were extended and carried over into the next year. One of the packers becoming insolvent, litigation ensued, in which it was decided that the warehouse receipts issued by the packers for goods stored in their own warehouses, which was the character of many of the receipts taken by complainants as security, were invalid against attaching creditors; and in August, 1884, in order that these goods might be warehoused in such manner that there should be no question about complainants' title, all the receipts then in the hands of the complainants, together with the notes secured by them, were sent by complainants to Hancock, in order that he might for them attend to having the goods properly warehoused for their security. These goods were so warehoused in several storage places, but the storage receipts, by Hancock's direction, were made out in the name of A. M. Hancock, agent. It was the intention of the complainants at that time that the goods should be rapidly shipped to them to be sold, or shipped to the persons they should sell to, and that Hancock also should negotiate such sales on their behalf as he could, and ship the goods to the purchasers, the complainants paying him a part of their commission of 5 per cent. Although constantly written to and urged, Hancock forwarded the goods very tardily, and in September, 1884, he began borrowing money from the defendant bank upon pledges of these warehouse receipts, which had been made out in his name as agent, and which he indorsed over to the bank. During September, October, November, and December, 1884, he obtained from the bank 15 loans, amounting to about $15,000, pledging as security 10,661 cases, of two dozen cans each, of the tomatoes packed in 1883, and about 5,000 cases of goods packed in the season of 1884.

Without recourse to Hancock's excluded testimony, but with the light thrown upon the transaction by his first examination, and by other witnesses, and by the bank books, check books, letters, and documentary evidence produced and not excluded, enough appears to show that the complainants held the title to the goods of the pack of 1883, which Hancock pledged to the bank. It is true that in this first examination

Hancock does say of these goods that they were put into his hands by the packers, and were warehoused by them in his name as agent, in order that he might sell them to reimburse himself for money which he had advanced them; but from his own testimony, and bank book and the documents and letters he produces, it appears that all the advances originally made by him to these packers of the goods of 1883 had been repaid to him out of the loans subsequently made to them by the complainants; and although he attempts to confuse the matter by speaking of his advances to these packers, and of their orders to him to sell their goods to pay the advances, it is perfectly obvious that the advances were the loans he had made for the complainants with complainants' money. Of the goods of the pack of 1883, all have been traced, and the testimony leaves no doubt that they were portions of the goods pledged to complainants, and held by them as security for their loans to the packers. These loans, with interest, storage, insurance, and commission, in most cases quite equaled, if they did not exceed, the value of the goods, and in October, 1884, the packers had no longer any beneficial interest in them.

As to the goods of the pack of 1884, with regard to some of them, it appears that Hancock, from the sale of other goods pledged to complainants, had money of theirs in his hands, which he should have reported and paid over, but instead he used it in making advances to packers on the pack of 1884, and in purchasing goods of that year. These goods he also warehoused in the name of A. M. Hancock, agent, and they are the goods of 1884 pledged to the bank. Together with these, however, there were some goods of the pack of 1884 which Hancock had taken as security for sales he had made for complainants of cans and solder.

As to the goods of the pack of 1883, the actual fact being that they were the goods of the complainants, and that Hancock had no title to them, and that the warehouse receipts were in his name as agent, unless there is some provision of the Maryland factors' act or of the Maryland warehouse act, or unless the complainants are in some way estopped, it is well-settled law that Hancock, although he had authority to sell, could not, without complainants' authority, pledge the goods, and that the bank, independently of all the other sources of knowledge, from the word "agent" on the face of the warehouse receipts, had notice that Hancock was not the actual owner, and that he was *prima facie* doing an unauthorized and unlawful act in pledging them, and that the bank in loaning money on them assumed the burden of ascertaining the actual fact of ownership and Hancock's authority to pledge. The cases already cited are authority for this rule of law, and many others might be cited.

Beyond the significant fact that the warehouse receipt itself imported that Hancock was not the actual owner, there was much within the knowledge of the officers of the bank with regard to the large amount of money of the complainants passing through their bank in Hancock's account, as agent, and which they knew that Hancock was advancing for complainants on the security of canned goods placed in warehouses in the season of 1883, which should have put them upon inquiry as to

the actual ownership of the goods. It is true that when the account was opened in November, 1883, the officers of the bank asked Hancock for whom he was agent, and he replied, "For my wife and children;" but they could not escape knowing the nature of the transactions for which the account was used, and as to the ownership of these goods taken by them it is not contended that they ever made any inquiry whatever. That the goods pledged to the complainants, stored in the different warehouses, should be warehoused in the name of Hancock, agent, under all the circumstances of the business, was natural. It enabled Hancock to attend to shipping them in such lots as the complainants might make sales of, and as he might be directed by them. The fact that Hancock had the authority from complainants to sell and deliver such of them as he could find purchasers for at satisfactory prices does not help the bank's case at all, for an authority to sell does not include a power to pledge. *Allen* v. *Bank*, 120 U. S. 32, 7 Sup. Ct. Rep. 460, and cases there cited.

Coming now to the goods of the pack of 1884, I think most of them stand upon a different footing. The title to at least a considerable quantity of these goods was never in the complainants. All that can be said in their behalf is that, as Hancock had converted complainants' money to his own use, and had misapplied it in obtaining these goods of the pack of 1884, instead of paying it over to them, that they might have an equitable lien on the goods to the extent that their money was used in paying for them. But, with some exceptions, Hancock never considered these goods theirs. He did not obtain these goods for them, but for himself. In warehousing them in his name as agent, he may have intended to protect them from other creditors if occasion required; but he did not intend to give complainants a title to them, and never told them anything about them, and they knew nothing about them. If the officers of the bank had gone to the complainants, and asked if these goods were theirs, they would have been obliged to answer that to their knowledge they had no goods of the pack of 1884 warehoused in Harford county.

The money of the complainants has not been directly and distinctly traced to the payment for these goods, and I do not find the misappropriation of complainants' money, in purchasing, brought home to the officers of the bank, so as to affect them with knowledge of it. It seems not at all improbable that some of the loans from the bank went in part to pay for these goods.

On behalf of the bank, it is urged that both by the Maryland factors' act, (Code, art. 2,) and the Maryland act with regard to storage receipts, (Code, art. 14,) the common-law limitations upon the right of one intrusted with goods to pledge them have been so altered as to protect the bank in its transactions with Hancock. The Maryland factors' act provides that any one intrusted with bills of lading, storekeepers' certificates, orders for the delivery of goods, or similar documents showing possession, shall be deemed the true owner of the goods described therein, and may sell or pledge the same to any person: provided, that person

shall not have notice, by such documents or otherwise, that the person so intrusted is not the actual and *bona fide* owner. In the present case, however, it is plain that the bank, from the word "agent" appearing on the face of the warehouse receipt, had notice that Hancock was not the actual and *bona fide* owner.

By the Maryland act with regard to storage receipts, they are declared to be negotiable instruments in the same manner as bills of lading and promissory notes; but it still remains the law with regard to storage receipts, as well as with regard to negotiable instruments, that the pledgee takes them at his peril, if there is anything appearing on the face of the instrument which affects the holder's right to pledge it. The holder of a promissory note, made payable to him as trustee, executor, attorney, or agent, has not *prima facie* the right to pledge it. The fiduciary character of the holder being expressed on the face of the instrument, and giving notice that the holder is not the true owner, there is nothing in any of the Maryland acts which relieves the pledgee from ascertaining the actual authority of the holder to pledge. *Allen* v. *Bank*, 120 U. S. 20, 7 Sup. Ct. Rep. 460.

In my judgment, the complainants have established their right to a decree against the bank for the amount realized by it from the sales of 10,661 cases of canned tomatoes of the pack of 1883, pledged to it by Hancock.

It is urged that there was laches on the part of the complainants after they learned that their goods had been pledged and were being sold by direction of the bank, in delaying to notify the bank of their claim, and, in consequence of that delay, the bank paid to Hancock a considerable balance in cash which remained after satisfying the bank's loans, and which, if timely notice had been given, they could have retained. From a letter from complainants to Hancock, dated November, 1885, they appear to have heard that goods were being sold by a commission merchant at Havre de Grace named Seneca, by direction of the bank, for money loaned, which they suspected might be their goods, and they asked Hancock for an explanation of it. What his explanation was I do not find, but, as they did not notify the bank of their claim until four months afterwards, there would appear to have been a remissness on their part; but as there were pledged to the bank by Hancock, besides the goods of 1883, which I have held to be the complainants', about 5,000 cases of the goods of 1884, which Hancock obtained in the manner hereinbefore mentioned, and as to some of which the testimony indicates that they were also held as security for debts due to complainants for goods sold the packers in 1884, and as it does not appear from which of these lots of goods the balance paid over was derived, I do not find that there is any presumption that the money paid over was derived from complainants' goods, rather than from the goods which were not complainants.

Decree in favor of complainants for the amount realized from the sales of the goods of 1883 sold by the bank, with interest from date of filing bill, and costs.

BANGOR ELECTRIC LIGHT & POWER CO. *et al.* *v.* ROBINSON *et al.*

(*Circuit Court, D. Massachusetts.* September 20, 1892.)

No. 2,744.

1. CORPORATIONS—TRANSFERS OF STOCK—UNAUTHORIZED SALE—INNOCENT PURCHASER.
The Maine statute providing that shares of corporate stock may be transferred by indorsement and delivery, but that the transfer shall not be valid, "except between the parties thereto," until the same has been entered on the books of the corporation, does not govern the rights of two persons, each claiming a certificate of stock which was transferred to one of them by a third person by mere indorsement in blank, and which the other acquired in good faith, for a valuable consideration, from a stranger, who had it in his possession without authority.

2. SAME.
Nor is such a case controlled by Pub. St. Mass. c. 78, § 6, which is apparently aimed only at stock jobbing, or by Acts Mass. 1884, c. 229, even if it reaches stock of foreign corporations, as its only purpose appears to be to remove the necessity for the registration of transfers of stock certificates as against subsequent purchasers.

3. SAME—ESTOPPEL.
The rule that where one of two innocent persons must suffer through the fraud of a third person, he must bear the loss who placed it in the power of the third person to commit the fraud, does not apply to the case of two persons having a safety deposit box in common, and one of them, without authority, abstracting therefrom, and transferring to an innocent purchaser for value, a certificate of stock indorsed in blank belonging to the other.

4. SAME—NEGOTIABILITY.
While certificates of stock indorsed in blank have a certain *quasi* negotiable character, this quality does not inhere in them to the extent of depriving the owner of title when the certificate is stolen from him, and then transferred to an innocent purchaser for value.

In Equity. Bill of interpleader brought by the Bangor Electric Light & Power Company, a Maine corporation, and Frederick M. Laughton, president thereof, and a citizen of Maine, against Elizabeth R. Lee and Augustus G. Robinson, both citizens of Massachusetts, to determine the right to a certificate of 100 shares of stock in the complainant corporation. Decree in favor of defendant Robinson.

The bill shows that complainant Laughton, in his individual capacity, sold to defendant Robinson the certificate of stock in question, and transferred the same to him by an indorsement in blank, that no transfer on the books of the company had ever been made, and that the stock had subsequently come into possession of defendant Lee, who still retained it, and claimed a right to hold it as collateral security, and that Robinson also still claimed to be the owner thereof, and had notified the company to that effect. From the separate answers of the defendants and the proofs, it appeared that Robinson had certain business relations with one Williams, a broker, and that they had in common a safety deposit box, to which each had access; that Robinson placed the certificate therein, and that, without his authority or knowledge, Williams abstracted it therefrom, and transferred it to Mrs. Lee, as collateral security for a loan, and that he subsequently disappeared without repaying the money borrowed. The answer of Mrs. Lee averred, among other things, that Williams was introduced to her by Robinson, who recommended him to her in high terms, repre-

sented that he was honest, and advised her to buy stocks through him and deal with him, and stated that he himself had employed Williams as his financial agent to buy and sell stocks, and intended to do so in future. She further averred that, believing these representations, she had various dealings with Williams, including that already mentioned.

Charles G. Chick, for complainant.

George C. Abbott, for defendant Lee.

Charles L. Woodbury and *Henry Walker*, for defendant Robinson.

PUTNAM, Circuit Judge. In the view of the court, no statute, either of Maine or Massachusetts, affects this case. The statute of Maine applicable to certificates of stock provides that they may be transferred by indorsement and delivery, but that transfers shall not be valid, "except between the parties thereto, until the same is so entered on the books of the corporation," etc. The question under this statute applicable to this case is: Who are the "parties" with reference to whom the statute by exception declares this transfer valid? In other words, whose name shall be inserted in the blank transfer, under the circumstances of this case, to make it complete? When this is ascertained, the transfer becomes perfect in favor of the person so ascertained as against the other "party," namely, F. M. Laughton, who indorsed the certificate in blank. So far as this case is concerned, there are no outstanding equities in strangers to be considered, and the statute has no controlling effect. Without a due consideration of this rule of construction of the Maine statute, *Iron Co.* v. *Lissberger*, 116 U. S. 8, 6 Sup. Ct. Rep. 241, could not have been decided as it was; because here the court held that the transfer was valid, under the particular circumstances, in favor of an unregistered transferee as against an attaching creditor of the stockholder of record. When read together, the following cases in the supreme court will be found to be entirely consistent with this conclusion, and to fully sustain it, namely: *Baldwin* v. *Ely*, 9 How. 580; *Combs* v. *Hodge*, 21 How. 397; *Bank* v. *Lanier*, 11 Wall. 369; *Vermilye* v. *Express Co.*, 21 Wall. 138; *Parsons* v. *Jackson*, 99 U. S. 434; *Cowdrey* v. *Vandenburg*, 101 U. S. 572; *Railway Co.* v. *Sprague*, 103 U. S. 756, and *Hammond* v. *Hastings*, 134 U. S. 401, 404, 10 Sup. Ct. Rep. 727.

Pub. St. Mass. c. 78, § 6, is apparently aimed only at stock jobbing, as is shown by the reference in *Brown* v. *Phelps*, 103 Mass. 313, to *Stebbins* v. *Leowolf*, 3 Cush. 137. Likewise the Massachusetts statute of 1884, c. 229, does not seem pertinent, whether it reaches certificates of stock of foreign corporations or not. Its only purpose appears to be to remove the necessity of the registration of transfers of stock certificates as against subsequent purchasers, and it does not touch the question of the effect of an unauthorized sale of a certificate indorsed in blank. *Fiske* v. *Carr*, 20 Me. 301, turned on the very peculiar language of the statute cited in it, which unqualifiedly provided that the stock should not pass from the proprietor until the transfer had been recorded. So far as the question at bar is concerned, that statute was essentially different from the present. The latter, by implication and uniform construction, makes an un-

recorded transfer valid, not only as between the parties to it, but also as between all others having notice. *Bank* v. *Cutler*, 49 Me. 315, is the ordinary application of the present statute, and in no way touches the questions at bar. The court does not perceive that any other Maine decision cited bears on this case. On the whole, the court is satisfied that this suit is to be disposed of according to the general principles of jurisprudence, applicable to certificates of corporate stocks indorsed in blank.

The court is of the opinion that whatever took place personally between Robinson and Mrs. Lee was purely of a friendly character, in no sense allied to business transactions, entirely in good faith, and not to be held by the law to prejudice either. The counsel for Mrs. Lee bring forward the proposition that when one of two innocent persons must suffer from the fraud of a third, the loss must be borne by him whose negligence enabled the third person to commit the fraud; and they cite on this point *Allen* v. *Railroad Co.*, 150 Mass. 200, 207, 22 N. E. Rep. 917. It can hardly be said that this is a rule of the common law; but, if it were, the practical application of it is not helped by the general terms in which it is expressed. The court is forced to the conclusion that it does not apply to relieve Mrs. Lee any more than it would an innocent purchaser for full value of jewelry stolen as the result of careless exposure by the owner. Mrs. Lee either purchased outright, or advanced money on a pledge of the certificate, or both; but the details of this are of no consequence, because, having advanced a valuable consideration in good faith, she stands in the courts of the United States the same in either view. Robinson was absent when the transaction took place; and, if he had been within reach, *non constat* that she would have inquired of him concerning the certificate, there being nothing on it to show that he had any interest in it. Indeed, there was no person of whom she could inquire, unless of Laughton, the indorser of the certificate. As he had parted with it long before, he could not have aided her. She had no means of protecting herself. Robinson, with reasonable care, could easily have protected all parties. If it were a mere question of balancing equities, or of throwing the loss on the innocent party, the court would have little difficulty, and it regrets that the result of the case must be contrary to what seems natural justice.

The evidence shows, and it is not disputed, that the certificate of stock was deposited by Robinson in a box in the Boston Safe-Deposit & Trust Company, under such circumstances that both Robinson and the broker of whom Mrs. Lee purchased had access to it. The certificate, however, was not intrusted to the possession of the broker, either directly, indirectly, or impliedly; nor was he authorized to remove it from the box. His misdoing was not embezzlement or fraud, but criminal larceny at common law. The condition of things was like that of two persons, lawyers or brokers, occupying the same office, with a common safe or vault, to which each has access, and in which each is accustomed to deposit his papers or securities. The general principle which the court must follow has been stated as late as April of the current year by Lord HERSCHELL in *Bank* v. *Simmons*, [1892] App. Cas. 201, 215, as follows:

"The general rule of the law is that, where a person has obtained the property of another from one who is dealing with it without the authority of the true owner, no title is acquired as against that owner, even though full value be given, and the property be taken in the belief that an unquestionable title thereto is being obtained, unless the person taking it can show that the true owner has so acted as to mislead him into the belief that the person dealing with the property had authority to do so. If this can be shown, a good title is acquired by personal estoppel against the true owner. There is an exception to the general rule, however, in the case of negotiable instruments."

Consider first the exception in behalf of negotiable instruments. This does not extend to bills of lading indorsed in blank, certificates of stock indorsed in blank, bonds or scrip payable to bearer or indorsed in blank and overdue, nor to instances like those in *Parsons* v. *Jackson, ubi supra*, and *Baxendale* v. *Bennett*, 3 Q. B. Div. 525, where the negotiable paper had been drawn and signed, but never issued. In the view of the court, the rule concerning certificates of stock indorsed in blank is correctly stated in Daniel on Negotiable Instruments, (4th Ed.) §§ 1708, 1709. They have a certain *quasi* negotiability, arising largely, if not entirely, from the fact that the holder has voluntarily made delivery to some other person, and thus precluded himself by the general principles of estoppel; and more particularly by the fact that he has given an apparently unrestricted authority, which cannot be limited to the injury of others by undisclosed instructions. This latter proposition is the ordinary rule applicable to all agencies, and is thoroughly illustrated in *Breckenridge* v. *Lewis*, 84 Me. 349, 24 Atl. Rep. 864. In this case the defendant intrusted to a third person her signature in blank for a business purpose. It was used in violation of the undisclosed authority, and the court sustained the transaction. Certificates of stock indorsed in blank are so far of a negotiable character that they ordinarily pass from hand to hand, that they are not subject to *lis pendens*, and that, as stated by Daniel, in order to effectuate the ends of justice and the intention of the parties, the courts ordinarily decree a better title to the transferee than actually existed in the transferrer. Nevertheless, we do not find that any court of authority has ever gone so far as to hold that the holder of them may lose the title to such as may be stolen from him, as he may of negotiable promissory notes, bills, scrip, or bonds, payable to bearer or indorsed in blank.

Touching the other proposition found in the foregoing citation from *Bank* v. *Simmons*, namely, that the purchaser shows that "the true owner has so acted as to mislead him into the belief that the person dealing with the property had authority to do so," the rule is stated quite generally, but its application is limited. The court need not refer to the well-known cases in which a party stands by silently, and permits his property to be disposed of without a protest. The contest at bar relates to the mere negligence of the original holder, and how far this may prevent him from reclaiming his property. At first it occurred to the court that, inasmuch as Robinson had seen fit to leave this certificate in such condition as to indicate that somebody was authorized to acquire it and fill in the indorsement, he was barred; but the court is unable to find

any authorities sustaining this suggestion, and is compelled to treat this certificate, indorsed in blank and stolen, as it would any other stolen property, aside from strictly negotiable securities. There has been at times a disposition to lay down broadly rules touching negligence in cases analogous to this. In *Bank* v. *Stowell*, 123 Mass. 196, these rules were largely discussed. The opinion pointed out that they apply only when there is some special duty or confidential relation between the parties, as between a depositor and the bank; and it was held that the maker of a note was not liable for the increased amount by which it was raised, notwithstanding the careless manner in which he had drawn it. The same principle was also discussed in *Baxendale* v. *Bennett*, *ubi supra;* where it was held that, although the defendant had completed a blank acceptance, and left it in the drawer of his writing table, which was unlocked, from which it was stolen, and afterwards filled up and purchased by an innocent party, yet he was not liable thereon. In *Abbott* v. *Rose*, 62 Me. 194, 204, the broader rule was stated with favor, but it was not material to the case, and is not harmonious with the principles of the later decisions,—*Breckenridge* v. *Lewis*, *ubi supra*, and other cases already cited. In all the cases in any way pertinent relied on by the counsel of Mrs. Lee there was a voluntary intrusting of actual possession by the holder. On the whole, the court is unable to find any principle of the common law which will protect her; and the case at bar, though in equity, involves only common-law rights. Let there be a decree that the blank transfer on the certificate of stock in question in this case, deposited in the registry of the court, be filled up in favor of defendant Robinson, and that the plaintiff corporation issue him a new certificate in exchange therefor, and that complainants recover one half of their costs from defendant Robinson and one half from defendant Lee.

FINANCE CO. OF PENNSYLVANIA *v.* CHARLESTON, C. & C. R. Co. *et al.*, (POCAHONTAS COAL CO. *et al.*, Interveners.)

(*Circuit Court, D. South Carolina.* November 4, 1892.)

RAILROAD COMPANIES—RECEIVERS—CLAIMS OF MATERIAL MEN—DIVERTED EARNINGS.

A diversion by a railroad company of $2,300 from the payment of claims for material used in keeping the road a going concern, to the permanent improvement of the road, or to the payment of interest on bonds, must be made good by the bondholders, and is so made good by the issue of receiver's certificates and the application of their proceeds to such claims, and the material men are entitled to no further preference from the proceeds of the sale. *Fosdick* v. *Schall*, 99 U. S. 235, followed.

In Equity. Bill by the Finance Company of Pennsylvania against the Charleston, Cincinnati & Chicago Railroad Company and others. D. H. Chamberlain appointed receiver. 45 Fed. Rep. 436. The Poca-