

mortgage, while valid in respect to lands acquired for mining purposes, should not be construed to include, and it does not appear that by the decree below it was made to include, lands which were not purchased for use in the company's business. We think there was no error in this particular. For the error of the court in declaring the principal of the mortgage debt due, the decree below is reversed.

HORTON v. NEW YORK CENT. & H. R. R. CO.

(Circuit Court, N. D. New York. October 22, 1894.)

1. RES JUDICATA—DAMAGES FOR INFRINGEMENT OF A PATENT.

The owner of a patent obtained a decree for a perpetual injunction against infringement, and was awarded damages and profits for infringements occurring prior to a certain time. *Held*, that he could not maintain a second suit against the same defendant to recover damages and profits arising from other acts of infringement committed during the same period, but of which no evidence was given in the former suit, and no recovery asked.

2. PATENTS — INFRINGEMENT — INJUNCTION — SECOND SUIT AGAINST SAME DEFENDANT

Complainant in a bill to recover damages and profits accruing from acts of infringement committed by defendant subsequent to a former decree prayed for an injunction as well as for an account. *Held*, notwithstanding an injunction was unnecessary, that a decree for an injunction as well as for an accounting would be granted.

This was a suit in equity by Cornelius M. Horton against the New York Central & Hudson River Railroad Company, impleaded with the West Shore Railroad Company, for infringement of a patent.

James A. Allen, for complainant.

Frank Hiscock, for defendant.

WALLACE, Circuit Judge. This cause presents the question whether the owner of a patent, who, in a former suit in this court against the defendant, obtained a decree for a perpetual injunction against infringement, and awarding him damages and profits for the infringements occurring prior to January 11, 1892, can maintain a second suit against the same defendant to recover damages and profits arising from other acts of infringement, committed during the same period, but of which no evidence was given in the former suit, and no recovery asked. I am aware of no principle which authorizes a second recovery against the defendant upon such a state of facts. For aught that appears, the complainant deliberately withheld all proof in respect to acts of infringement which he knew the defendant had committed, and in respect to which he might, if he had chosen, have recovered full compensation. His cause of action in the former suit has passed into judgment, and the maxim applies, "Expedit reipublicae ut sit finis litium."

The complainant also seeks to recover damages and profits accruing from acts of infringement committed by the defendant since the rendition of the former decree. In this bill he prays for an injunction as well as for an account. Notwithstanding an injunc-

tion is unnecessary, as the complainant can have recourse to the one he already has to obtain all necessary relief, I think that fact does not deprive him of the right to resort to a court of equity, and obtain the ordinary decree in a patent suit against a defendant who is violating his rights. A decree is ordered for the complainant for an injunction, and for an accounting of damages and profits accruing from the infringements committed since January 11, 1892. There will be a reference to Anson J. Northrup, of the city of Syracuse, as master, to take and report the account.

BANK OF COMMERCE v. BANK OF NEWPORT.

(Circuit Court of Appeals, Eighth Circuit. October 22, 1894.)

No. 441.

1. CORPORATION—MEMBER—WHO IS.

The holders of bank-stock certificates, which stated that the shares were "transferable only on the books of the bank," on surrender of the certificate properly indorsed, sold, indorsed, and delivered such certificates to J. Bros. & Co., who were debtors of the bank. One of the latter firm, and also one of the sellers, notified the bank of the transfer; and the cashier made an entry on the stock-certificate book—which was the only book kept showing who were stockholders—that the certificates were transferred to, and owned by, J. Bros. & Co. Held, that the firm of J. Bros. & Co. was a "member" of such corporation, within the meaning of Mansf. Dig. Ark. § 975, which provides that the stock of every corporation shall be transferred only on the books thereof, in such form as the directors prescribe, and such corporation shall "have a lien upon all the stock or property of its members" for all debts due from them to it.

2. SAME—STOCK—LIEN FOR DEBTS DUE FROM MEMBERS—ESTOPPEL.

The facts that the certificates recited that the shares were transferable only on the books of the bank on the surrender of the certificates, and that the bank did not adopt or use that mode of transfer, did not estop it from claiming a lien on the stock for the debts due it from such firm, as against a subsequent vendee and indorsee of such certificates, who took them from such firm.

Appeal from the Circuit Court of the United States for the Eastern District of Arkansas.

Action by the Bank of Commerce against the Bank of Newport to compel defendant to transfer to plaintiff, on defendant's corporate books, certain shares of its stock. From a judgment for defendant, plaintiff appeals.

U. M. Rose, W. E. Hemingway, and G. B. Rose, for appellant.
J. M. Moore, for appellee.

Before CALDWELL, SANBORN, and THAYER, Circuit Judges.

THAYER, Circuit Judge. The question to be decided on this appeal arises out of the following facts, which are practically undisputed: On the 3d and 4th days of August, respectively, in the year 1890, the appellee, the Bank of Newport, of Newport, Ark., issued two stock certificates, one of which certified that the firm of Jones Bros. & Mask was the owner of 100 shares of stock