

in cigarette machines; and the question is not whether a court of equity would compel specific performance if Hulse had conceived the invention after he had severed his relations with the company, and at a time when it did not result directly from the opportunities of his employment, but whether the court should do so in this case, where the invention was conceived while he was in the company's service, and perfected with its direct assistance, and in a case where Wright, the other party interested with him, was an agent and business manager of a department of the company's business. The case presents circumstances and elements calling for the exercise of this equitable remedy. We concur in the conclusion reached by the circuit judge in his opinion in this record:

"The public, in so far as questions relating to public policy are concerned, has no interest in this matter. Should the claim of the Bonsack Machine Company fail, the public would have no right to use the improvement. The device would then belong to Hulse, would be his secret, protected by patent, and guarded from the public use by provisions of law. The restraint provided for in the contract does not interfere with any interest of the public, and it only gives a fair protection to the party in whose favor it is given, for which proper compensation was stipulated for the party making it."

The last assignment of error is the amount found by the master, and allowed by the court. The question was, what compensation should, under the circumstances, be allowed? The Bonsack Company had declared that the compensation would be liberal. The deserving party was Hulse, and the compensation was really his. Wright deserved nothing. He was only a speculator, seeking share of Hulse's reward. Hulse voluntarily, or for considerations which he considered adequate, agreed to divide with him. When, therefore, the master awarded the gross sum of \$8,126.36, this was his finding of what would be a liberal compensation for Hulse's service in and about the improvement. We see no error in this of which either party can rightly complain.

It is ordered that the decree of the circuit court be affirmed in all respects, each party paying its own costs in this court.

PLAYFORD v. LOCKARD.

(Circuit Court, E. D. Pennsylvania. January 15, 1895.)

No. 15.

EQUITY PRACTICE—PLEA TO JURISDICTION—INTERROGATORIES.

To a bill for an accounting, propounding interrogatories to defendant as to the amounts received and paid by him, defendant filed a plea, supported by answer, averring that the court had no jurisdiction, because the amount in dispute was less than \$2,000. *Held*, that the issue of fact thus presented should be determined before proceeding further with the litigation, and defendant should be required to answer the interrogatories, other questions being reserved meantime.

This was a bill in equity brought by George Playford, a citizen of the state of Ohio, against William Lockard, a citizen of Pennsylvania, resident in the city of Philadelphia.

The bill averred that on September 1, 1880, the complainant was seised in his demesne as of fee of a certain lot or piece of ground, with the tenement thereon erected, situated in the said city of Philadelphia, and particularly described in the bill; that on or about that date the complainant agreed verbally with said defendant to allow him to collect the rent arising from said property, and after paying the taxes, water rent, and interest upon incumbrances, as also the sum of \$50 to the said defendant, he (the said defendant) should pay over to the said complainant the remainder of the said rent, profit, and income; that, in pursuance of said agreement, the said defendant was still collecting the said rents and income of said property, but whether he had paid the said taxes, water rent, and interest the complainant professed ignorance, and could not set forth. The bill further averred that the said defendant had refused to pay over the said residue and remainder over and above the said expenses; that the amount of said residue and remainder was not known to the complainant, but he averred that he believed and was informed that it was above the sum of \$2,000. The bill prayed for an accounting, and for a writ of injunction restraining the defendant from further violating the rights of the complainant in the premises. To the end that the defendant should make full disclosure and discovery of the matters aforesaid (an answer under oath being expressly waived), the following interrogatories were propounded: (1) Whether he has received any rents, profits, or income from or arising from the premises aforesaid, and, if yea, how much, and the dates and amounts of such receipts. (2) What amounts he has paid for taxes lawfully assessed against said premises, if any, since the 1st day of September, 1880. (3) What amounts he has paid for rent due for the use of water on said premises, and how much since the 1st day of September, 1880. (4) What amounts, if any, he has paid for or on account of interest on incumbrances of the within described premises. State the amounts paid and dates of payment in detail. (5) What amount of net income from the said premises has been received by him since September 1, 1880. To this bill the defendant filed a plea, averring that the court had no jurisdiction over the subject-matter, because the amount in dispute was less than \$2,000, and an answer, admitting that the complainant was the owner of the said premises, but prior to January 1, 1879, defendant denied that he ever acted as agent for the purposes mentioned in the bill, and averred that in November, 1878, he purchased the said premises from the complainant, and has since been in possession as owner, and that complainant has no interest therein, and never previously claimed any. The answer further averred that this bill was really an ejectment bill, and that complainant has a remedy at law; that the value of the property is not \$2,000, and hence the court had no jurisdiction; it was assessed for taxation at \$800, and was mortgaged for \$800, and rented for \$12 a month; that the receipts have been less than \$2,000; and that the expenditure was \$900.

Harvey & Hoffman and Mark Wilks-Collet, for complainant.
Bradbury Bedell, for defendant.

DALLAS, Circuit Judge. The bill in this case, which prays for an accounting by the defendant, alleges upon information and belief, the fact being peculiarly within the knowledge of the defendant, that the amount in controversy (the balance claimed) exceeds the sum of \$2,000. The defendant, by plea, asserts the contrary. This plea, if true, is a good one. It challenges the jurisdiction of the court. The plaintiff, however, is entitled to have the issue of fact thus presented determined; and it is manifest that this should be done, if possible, before the litigation is further proceeded with. The burden is upon the plaintiff, and one means by which he may meet it—perhaps the only one in this case—is by asserting his right to complete discovery from the defendant with respect thereto.

This he has done by filing five specific interrogatories, all of which are plainly pertinent to the averment of the plea; but the defendant, though he has filed an answer in support of his plea, has refused to reply to any of the interrogatories. I think he should be required to do so, and that all other questions should be reserved pending his compliance with that requirement. Accordingly, January 15, 1895, it is ordered that: (1) The defendant shall, within 10 days from this date, answer each and all of the interrogatories contained in the bill. (2) All other matters are reserved until the coming in of the said answers, with leave to either party to then move as he may be advised.

PLATT v. PHILADELPHIA & R. R. CO. et al.

(Circuit Court, E. D. Pennsylvania. October 23, 1894.)

No. 1.

1. RAILROAD—RECEIVERS—AGREEMENT FOR PLAN OF REORGANIZATION—WHEN ALLOWED.

The court will approve the petition of the receivers of a railroad company asking for leave to enter into an agreement for partial readjustment of the affairs of the company, when it appears that such agreement will put the stockholders and creditors of the company under no constraint as to the acceptance or rejection of a related plan of reorganization, nor will approval or disapproval of the proposed plan be implied in the order of the court.

2. PLAN OF REORGANIZATION—COMMISSION ON ADVANCES.

Where a syndicate proposes to effect a plan of reorganization of a railway company which is in the hands of receivers by the advancement of funds for the purchase of overdue coupons and interest, the court will, under the circumstances surrounding this case, grant permission to the receivers to pay the said syndicate $2\frac{1}{2}$ per cent. commission upon the money so advanced in case the said plan become effective.

3. RECEIVERSHIP—TERMINATION OF.

A court of equity will regard with satisfaction any legitimate effort to terminate a receivership of a railroad corporation which has existed for two years. The appointment of receivers is a temporary remedy, and, in the event of the parties interested failing to provide a means for their discharge within a reasonable time, a court of equity will, of its own volition, take into consideration the question of a dissolution of the receivership.

This was a petition of the receivers of the Philadelphia & Reading Railroad Company and the Philadelphia & Reading Coal & Iron Company, together with the Philadelphia & Reading Railroad Company, for authority to enter into an agreement for the partial readjustment of the affairs of the Philadelphia & Reading Railroad and Coal & Iron Companies, and to make the payments therein provided if the plan be carried into effect. The petition was referred to George L. Crawford, Esq., as special master, whose report follows, containing the terms of the said agreement and his comments thereon, with a recommendation that the prayer of the petition should be granted:

After the hearing of the argument upon the said petition, after due advertisement, had begun on October 15, 1894, before the court, its then pre-