

just ground of complaint concerning them, and that substantial justice has been done the parties to this controversy. We find no error in the proceedings complained of, and the judgment is affirmed.

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HOHORST v. HAMBURG-AMERICAN PACKET CO.

(Circuit Court, S. D. New York. September 24, 1896.)

**COSTS IN EQUITY—MASTER'S FEES.**

A defendant who successfully defends himself upon an accounting before a master, so that only nominal damages are awarded against him, will not be required to pay any part of the master's fees. As the result of the litigation shows that he has been needlessly harassed, it would be inequitable to require him to share the expense thereof.

This was a suit in equity by Frederick Hohorst against the Hamburg-American Packet Company for infringement of a patent. The cause was heard upon a motion to compel payment of the master's fees. It appeared from the affidavit of the master that there had been an accounting before him, which was continued from November 15, 1894, to May 14, 1896, when he rendered a report awarding the complainant nominal damages in the sum of six cents. It further appeared that the value of the master's services was \$550, of which \$200 had been paid before the rendition of the report, leaving still due \$350, which the master states is apportionable equally between complainant and defendant. No question was raised as to the reasonableness of the master's charges; but defendant refused to pay, on the ground that the expenses should be borne by the defeated party, while the complainant takes the position that the successful party should pay the master's fees.

Thomas Cooper Byrnes and Walter D. Edmonds, for the motion.  
Logan D. Emoud and Mr. Harley, opposed.

LACOMBE, Circuit Judge. Complainant, having been defeated upon the accounting, should pay the master's fees. The result of the litigation shows that he has needlessly harassed defendant, and it would be inequitable to require defendant to pay the expenses of defending himself against an improper claim. There being nothing to contradict the master's affidavit, nor anything tending to show that his charge is unreasonable, it is fixed at \$550. Complainant having already paid \$200, an order may be taken requiring him to pay the additional \$350.

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BENEDICT v. MOORE et al.

(Circuit Court, S. D. New York. November 16, 1896.)

**EQUITY—DEMURRER—SUFFICIENCY OF BILL.**

A bill is good on general demurrer, although it may contain redundant or superfluous matter, where its allegations show that defendants obtained possession of complainant's property, agreeing to accomplish a certain object; that they violated this agreement, converted his property to their

own use, so manipulated it that they made personal gains, and refused to return either the original property or the profits, the amount of which is unknown.

This was a bill in equity by Elias C. Benedict against John G. Moore and others. Defendants filed general demurrers.

John L. Hill, for complainant.

Hottinan Miller, for defendant Guaranty Trust Co.

Thomas Thacher, for other defendants.

COXE, District Judge. The bill contains 65 paragraphs, 138 folios and covers 34 printed pages. It is, therefore, a fair presumption that nothing relating to the transaction in controversy has been omitted. The defendants have filed general demurrers. No objection is made to the bill upon the ground that it is too long. Were this question properly presented, it is not unlikely that the court might reach the conclusion that, should the pleader set himself seriously to the task of revision and condensation, a word or two, here and there, might possibly be dispensed with. The sole question arising upon these demurrers is whether or not the bill contains a cause of action. If it does it matters not what else it contains.

It is thought that the bill may be sustained for the purpose of having the relations of the parties declared as those of trustee and cestui que trust, compelling an account from the defendants of the profits derived from the use of complainant's property and restraining the disposition thereof until the rights of the parties are determined. In order to test the proposition let it be assumed that the complainant succeeds in proving the following facts: That he was the owner of 2,000 shares of the stock of the Williamsburgh Gas-light Company, which he transferred to the individual defendants solely to enable them to effect a consolidation of all the gas companies of the city of Brooklyn. That the shares were to remain the property of the complainant until surrendered for his ratable share of the stock and bonds of the consolidated corporation. That having obtained possession of the complainant's shares upon the representation that they were to be so used and having agreed that such consolidation should be made and the complainant's share of the stock and bonds of the new company delivered to him the defendants used the Williamsburgh shares to carry out an entirely different scheme and declined to surrender the original shares or even the bonds and stocks of the new and unauthorized company or to account for the same in any way. That the defendants have made profits out of the transaction which they refuse to turn over to the complainant. In short, that the defendants obtained possession of the complainant's property agreeing to accomplish a certain object, that they violated this agreement, converted his property to their own use, so manipulated it that they made personal gains and refuse to return either the original property or the avails and profits thereof, the amount of which is unknown to complainant. Assuming such proof is it not clear that the common law furnishes no adequate remedy and that the complainant is entitled to equitable relief? If so it only remains to consider whether such proof

can be given under the allegations of this bill. It is thought that it can be. An examination of the bill will disclose the fact that an averment sufficient to support each of the foregoing propositions can be found there. If, then, the bill is sufficient to enable the complainant to prove a cause of action in equity it cannot be held bad on general demurrer. The Guaranty Company is made a defendant, because, as the custodian of some of the property in dispute, its presence may be necessary to render a final decree effectual. The demurrers are overruled, the defendants to answer or plead within 20 days.

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### HARKRADER v. CARROLL.

(District Court, D. Alaska. October 28, 1896.)

1. **RIGHTS IN MINING CLAIMS—HOW DIVESTED.**  
Possessory rights in mining claims may be divested (1) by sale or gift, (2) by forfeiture, or (3) by abandonment.
  2. **SAME—ABANDONMENT.**  
Where intention to abandon and a surrender of the claim unite, abandonment is complete, and operates instantaneously to restore the claim of the United States.
  3. **SAME—SALE AFTER ABANDONMENT.**  
Where sale and conveyance take place after abandonment, the vendee or grantee takes no title.
  4. **SAME—IN THIS CASE.**  
*Held*, in this case, that the testimony establishes an abandonment by plaintiff's grantor prior to sale and conveyance, and therefore no title passed.
  5. **SAME—PRESUMPTION AS TO PROCEEDINGS IN LAND OFFICE.**  
The presumption of law is in favor of the regularity of all proceedings in the land office anterior to the issuance of the patent.
  6. **SAME—THIS PLAINTIFF CANNOT CHALLENGE SUCH PROCEEDINGS.**  
A party who is seeking to obtain title under a patent granted to another cannot, at the same time, dispute its validity.
- (Syllabus by the Court.)

Bill in equity to declare defendant trustee and compel him to convey.

J. F. Maloney (John Trumbull, on brief), for plaintiff.  
Johnson & Heid, for defendant.

DELANEY, District Judge. On the 1st day of November, 1894, letters patent were issued by the United States to the defendant for a certain lode-mining claim, known as the "Monitor," situated in Silver Bow basin, Harris mining district. The claim was located by William Moore and Thomas Mooney on the 4th day of June, 1881. Application for the patent was made on the 23d day of August, 1890, and a receiver's receipt was issued to defendant on the 27th day of July, 1892. After the application was filed, and before the certificate was issued, to wit on the 24th day of January, 1891, Moore executed a deed to the plaintiff for an undivided one-half of the claim. This bill is brought for the purpose of having defendant declared a trustee for plaintiff of said undivided one-half, and to compel a conveyance thereof. The issue of aban-