

insufficient. It is not improbable that he would cock his pistol on approaching the spring, and carelessly proceeded to inspect the interior of the spring after getting there, without thinking of the condition of his pistol. In examining for squirrel holes that might exist under the cement wall, he would naturally lean over the spring, and in so doing he would quite as naturally grasp the side of the low doorway near him. It is not improbable that he would do this with the pistol still in his hand. As he leaned forward over the spring, examining its interior,—unmindful, in his interest in what he was doing, of any danger,—the pressure of his weight on the hand by which he was supporting himself probably discharged the pistol while the arm holding it was extended at its full length, or nearly so. This explains those features of the case not otherwise explainable, and yet necessary to be explained in determining the question at issue. All minds may not agree as to the deductions thus drawn from the facts in evidence, but if the jury made these deductions, as they must have done, the court cannot, upon any argument of a different conclusion, overrule them and set their verdict aside. The motion is denied.

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BOWEN v. NEEDLES NAT. BANK.

(Circuit Court, S. D. California. February 1, 1897.)

No. 652.

**PLEADING—AMENDMENTS—NEW CAUSE OF ACTION.**

A complaint, on bills of exchange, filed by the payee against the drawer, may be amended by joining an additional cause of action based on defendant's promise to pay certain checks of a third party, upon which plaintiff had advanced the amount therein called for, since this is kindred in character to the original causes of action, and might originally have been joined with them.

This was an action at law by Abner T. Bowen against the Needles National Bank on certain bills of exchange. The case was heard on defendant's motion to strike out from the amended complaint certain parts thereof, which set up a new cause of action.

Works & Lee, for plaintiff.

Gardiner, Harris & Rodman and H. C. Dillon, for defendant.

WELLBORN, District Judge. Three causes of action are set up in the original complaint, each on a bill of exchange, of which the plaintiff was the payee and the defendant the drawer. Under a general leave of the court to amend his pleadings, plaintiff filed an amended complaint, which embraces all the matters set forth in the original complaint, together with another, and fourth, cause of action, based upon defendant's promise to pay certain checks of a third party, upon which plaintiff had advanced the amounts therein called for. The pending motion is to strike out this latter part of the amended complaint, on the ground that it introduces a new cause of action. The question is not free from difficulty, and the motion has been submitted

without citation of authorities or argument. I have made such research, however, as was practicable, and the cases below cited are more nearly in point than any others which I have been able to find. Upon the authority of these cases, I hold that since the new cause of action is kindred in character to the others, and might have been originally joined with them, all being based upon contracts, its introduction by amended complaint is allowable. *Tiernan v. Woodruff*, 5 McLean, 135, 23 Fed. Cas. 1203; *Tilton v. Cofield*, 93 U. S. 166; *U. S. v. Seventy-Six Thousand One Hundred and Twenty-Five Cigars*, 18 Fed. 150; *Estee, Pl. & Prac.* § 4445; *Anderson v. Mayers*, 50 Cal. 525; *Atkinson v. Canal Co.*, 53 Cal. 102; *Railroad Co. v. Wyler*, 158 U. S. 285, 15 Sup. Ct. 877. Motion denied.

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### HAWKINS v. STATE LOAN & TRUST CO.

(Circuit Court, S. D. California. February 1, 1897.)

#### LIMITATION OF ACTIONS—CONVERSION OF CHATTELS.

An action by the receiver of an insolvent national bank, in which it is alleged that the defendant, to which negotiable paper was sent by the bank for collection, appropriated the proceeds thereof, and refused to pay the same over on demand, is an action for the conversion of chattels, and is governed by the limitation fixed by subdivision 3 of section 338 of the California Code of Civil Procedure relating to actions for "taking, detaining, or injuring any goods or chattels."

E. T. Dunning and John W. Kern, for plaintiff.  
Gardiner, Harris & Rodman, for defendant.

WELLBORN, District Judge. Plaintiff alleges that he is the duly appointed and qualified receiver of the Indianapolis National Bank of Indianapolis, Ind., having been appointed on the 3d day of August, 1893, and having qualified on the 8th day of the same month, and that the defendant is a corporation duly organized under the laws and a citizen of the state of California; that on the 1st day of June, 1893, said National Bank forwarded to defendant for collection on account of said National Bank, a draft, on a person therein named, for \$996.39, payable 90 days after date; that defendant, at the maturity of said draft, collected the money due on said draft, "and, notwithstanding the fact that it had full knowledge of the insolvency and failure of said Indianapolis National Bank, and of the appointment of this plaintiff as receiver thereof, it appropriated the said sum to its own use, and refused, and still refuses, to pay the same over to plaintiff, though often requested by him so to do." Defendant has demurred to the complaint on the ground that the same is barred by the statute of limitations of the state of California, and contends that the limitation applicable is that contained in subdivision 1 of section 339 of the Code of Civil Procedure of California, while plaintiff contends, that subdivision 3 of section 338 of the Code of Civil Procedure of California applies. The period prescribed in the former section is two years, and would bar the action. The period prescribed in the latter section is three