

## HOLT v. HOLT ELECTRIC STORAGE CO.

(Circuit Court, E. D. Pennsylvania. March 25, 1897.)

**1. PLEADING—AFFIDAVITS OF DEFENSE.**

The allegation, in an affidavit of defense filed by a corporation, that the plaintiff "never paid into the treasury of the said defendant company" the money for which the instruments in the statement of claim were given, is not good, as the allegation may be true, and yet the plaintiff entitled to recover.

**2. CORPORATIONS—BREACH OF PROMISE MADE TO SERVANT.**

The breach of a promise made by plaintiff to a servant of the defendant corporation, who in accepting that promise in no way acted for or represented the corporation, cannot be set up in defense to an action against the corporation itself.

**3. SAME—SET-OFF OF STOCK LIABILITY.**

To entitle a corporation to set off a stock liability, it is requisite that the stock should have been issued as full paid, or that a regular call should have been made; and an affidavit of defense filed by a corporation, alleging that the plaintiff has not "fully paid" for stock which he holds, is not sufficient.

Albert B. Weimer, for plaintiff.

Walter E. Rex, for defendant.

DALLAS, Circuit Judge. "The law requires affidavits of defense to be so specific as to inform the plaintiff of the character of the defense he is required to meet, and to enable him to take judgment for such balance of his claim as is not covered by the defense set up." *Balsh v. Rathburn Co.*, 21 C. C. A. 584, 75 Fed. 971. Tested by this requirement, the affidavit of defense in this case is manifestly insufficient. If not purposely evasive, it, at least, is lacking in reasonable clearness and precision. The allegation, several times repeated, that the plaintiff "never paid into the treasury of the said defendant company" the money for which the instruments set forth in the statement of claim were given, may be true and yet the plaintiff be entitled to recover. The breach of a promise made by the plaintiff to a person who was the electrician of the corporation defendant, but who, in accepting that promise, in no way acted for or represented the corporation, cannot be set up in defense to an action against the corporation itself. The allegation that the plaintiff has not "fully paid" for stock which he holds is entirely consistent with the existence of the fact that the stock was duly issued without being fully paid, and that no assessment or call for further payment has been made. To entitle the defendant to set off a stock liability, it is requisite that the stock should have been issued as full paid, or that a regular call should have been made; and the affidavit is not as specific as it should be upon this point, because it wholly fails to state either the one or the other of the facts upon which any presently due indebtedness with respect thereto is dependent. Affidavits of defense must state facts; the effect of the facts stated is for the court. The allegation that the plaintiff, as president of the corporation, incurred debts on its behalf, "without consulting with the directors,

and directly against their wishes and authority," is also made in very general and somewhat equivocal terms, although specific statement of particular facts would not have been difficult; and, as respects this allegation, no information whatever is given "to enable him [the plaintiff] to take judgment for such balance as is not covered by the defense set up." The plaintiff's rule for judgment is made absolute.

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NEW DUNDERBERG MIN. CO. v. OLD et al.

(Circuit Court of Appeals, Eighth Circuit. March 22, 1897.)

No. 838.

1. LAND DEPARTMENT OF THE UNITED STATES—JUDICIAL POWER.

The land department of the United States (including in that term the secretary of the interior, the commissioner of the general land office, and their subordinates) is a quasi judicial tribunal, whose judgments upon questions within its jurisdiction are impregnable to collateral attack.

2. PATENT TO LAND—LEGAL EFFECT.

A patent to land or mineral lodes within the jurisdiction of the land department conveys the legal title to the property, and constitutes a judgment of that tribunal upon the questions involved in its issue.

3. JURISDICTION.

The test of jurisdiction is whether or not the tribunal has power to enter upon the inquiry, not whether its conclusion in the course of it is right or wrong.

4. PATENT TO MINING CLAIM—ACT MAY 10, 1872.

A patent issued in accordance with the provisions of the act of May 10, 1872 (17 Stat. 91, 94, c. 152, §§ 3, 9; Rev. St. §§ 2322, 2328), to a mining claim located before the passage of that act, under the act of July 26, 1866 (14 Stat. 251, c. 262), conveys the legal title to every vein or lode whose apex is within the exterior boundaries of the mining claim extended downward vertically, and is not subject to collateral attack in an action at law, either on the ground that there was a claim adverse to that patented when the act of May 10, 1872, was passed, or on the ground that adverse rights were affected by its issue.

5. LOCATION AND ENTRY OF MINING CLAIM—EFFECT.

One who locates and procures a patent to a mining claim under the act of May 10, 1872 (17 Stat. 91, 94, c. 152, §§ 3, 9; Rev. St. §§ 2322, 2328), thereby renounces and abandons all rights and privileges which do not pertain to his specific location under the provisions of that act.

6. LOCATION AND ENTRY OF MINING CLAIM, UNDER ACT MAY 10, 1872—THEIR EFFECT UPON RIGHTS PREVIOUSLY ACQUIRED UNDER ACT JULY 26, 1866.

A claimant, who discovered and located a lode mining claim under the act of July 26, 1866 (14 Stat. 251, c. 262), renounces and abandons all right to follow his lode or vein on the course of its strike beyond the exterior lines of his patented claim extended downward vertically, when he locates it upon the surface of the ground, enters it, and accepts a patent for it under the act of May 10, 1872 (17 Stat. 91, 94, c. 152, §§ 3, 9).

7. MINING CLAIM—LIMIT OF RIGHT TO FOLLOW LODE BEYOND SIDE LINES.

When the course of the strike of a lode or vein, on which a patented mining claim is based, crosses both side lines thereof, the side lines become end lines, and the owner has no right to the possession of the lode without those lines.

8. PATENT—STRANGER MAY NOT ATTACK.

One who is not in privity with the United States, and who did not acquire any right to be preferred in the acquisition of a mineral lode or claim before the same was patented to another, and whose grantor was never