For these reasons, I hold that an injunction pending this action should issue, upon the complainant executing a bond to save defendants harmless on account of the issuing thereof, in the sum of $5,000.

KING v. WILLIAMSON et al.

(Circuit Court of Appeals, Fourth Circuit. May 4, 1897.)

No. 183.

INJUNCTIONS PENDING EJECTMENT.

An injunction obtained by a plaintiff in ejectment to preserve the status quo pendente lite is properly dissolved, and the bill dismissed, when it appears that judgment has been rendered for the defendant in ejectment.

Appeal from the Circuit Court of the United States for the District of West Virginia.

Maynard F. Stiles, for appellant.
Campbell & Holt, for appellees.

Before GOFF and SIMONTON, Circuit Judges, and BRAWLEY, District Judge.

SIMONTON, Circuit Judge. This case comes up by appeal from the circuit court of the United States for the district of West Virginia. Henry C. King claims to be the owner in fee simple of a tract of land containing about 500,000 acres, granted to Robert Morris on the 23d of June, 1795, lying in the states of Virginia, West Virginia, and Kentucky. In order to recover possession of a part of this tract which lies in West Virginia, he instituted actions of ejectment in the circuit court of the United States for the district of West Virginia against a large number of persons, among whom are the appellees here. Very soon thereafter, and as ancillary to said actions of ejectment, he filed his bill on the equity side of the court against these appellees, praying an injunction against them from using the said land pendente lite. On the 4th of December, 1894, an order was issued on this bill against the said defendants, requiring them on a day certain to show cause why an injunction should not issue as prayed for in the bill, and in the meantime the usual restraining order was granted. On the 28th of February, 1896, the restraining order being still in force, but no formal order of injunction having been granted, the defendants filed their plea to the bill. In this plea they aver "that in the action of ejectment of the said Henry C. King against M. B. Mullins, Alexander McClintock, and John McClintock, wherein the said Henry C. King sought to recover possession of and an estate in fee in the same tract of 500,000 acres of land mentioned and described in the bill, upon a trial thereof before this honorable court and a jury impaneled therein, it was, to wit, on the 27th of February, 1896, by the judgment and consideration of this honorable court, adjudged that the said Henry C. King had no right to recover the possession of the said land, or any part thereof, and that he had no title in fee or otherwise thereto, or to any part thereof; which judgment still remains in full force and

effect, unreversed and unappealed from. * * * These defendants aver that the land mentioned and described in the bill is the same land, and none other, as the land so sought to be recovered in said action of ejectment against said Mullins and McClintocks, and the same for which it was adjudged the said Henry C. King has no right to recover." The plea prayed the bill be dismissed. This plea, and, presumably, the joinder thereon, came on to be heard, and the circuit court held the plea sufficient, and valid in law. Thereupon the bill was dismissed. To this action of the court exception was taken, and an appeal was allowed and the cause is here on assignments of error.

It is not necessary to discuss in detail these assignments of error. The case comes within and is controlled by the principle settled in the case of King v. Buskirk, the decision of which was announced at the February term of this court, 1897, 24 C. C. A. 82, 78 Fed. 233. The granting or the refusal or the dissolution of an injunction on a bill filed ancillary to an action of ejectment at law is wholly within the discretion of the court. It is for the chancellor to say, after the examination of the claim of title in the complainant, whether the showing prima facie is such as to render it proper to preserve the status quo. Poor v. Carleton, Fed. Cas. No. 11,272. When such an injunction is granted, it goes upon the idea that the property should be preserved until one or the other of the parties shows the best title to it, for the purpose of preventing irreparable mischief. But if it be made to appear to the chancellor at the hearing, or at any time after an injunction has been granted, that the injury is not of the irreparable character alleged, or that compensation may be afforded in damages, or that the title set up by complainant is not good, there can be no reason why the injunction should not be dissolved. The action of the chancellor does not conclude the claim of title of the complainant, and it can have no effect on the action at law. All that he does is to determine from the circumstances surrounding the case whether the ordinary course should be followed, and the party plaintiff be made to establish his right by the verdict of a jury, before depriving defendant of possession, or whether the equities of the case demand that the defendants be restrained from use of the land while the plaintiff is proceeding to prove his title. This conclusion the chancellor may reach either by an inspection of the record, or by affidavits, or by formal pleadings and evidence. In the present case, after presentation of certain facts relating to the claim of complainant, the consideration of these facts, and after argument, he concluded that it would not be equitable to allow the restraining order to remain in force. As the bill was filed solely for the purpose of obtaining an injunction pendente lite, the natural result of his conclusion was the dismissal of the bill. We see no error in this exercise by him of his discretion. The circuit court decree is affirmed.

BREYFOGLE et al. v. WALSH et al.

(Circuit Court of Appeals, Seventh Circuit. May 3, 1897.)

No. 350.

1. VENDOR AND PURCHASER—RESCISSION—RESTORATION OF STATUS QUO.
To entitle plaintiffs to rescind a contract of sale and repurchase, upon the ground that it was obtained by fraudulent means, they should, before bringing suit, have offered to place defendant in statu quo, by offering to return certain notes which had been surrendered to them as a part of the contract, and to repay to defendant, with interest, whatever sums it had paid out in compliance with the contract.

2. SAME—CONTRACT OF SALE AND REPURCHASE.
Where the parties to a contract of sale and repurchase, in which time is made the essence of the contract, were not dealing at arm's length, but there had been previous relations between them of partnership and of mortgagor and mortgagee, the purchaser having prevented the vendors from repaying the purchase price within the time prescribed by interfering with negotiations by them for a sale of the property, which interference was in pursuance of a conspiracy long before entered upon to cheat the vendors by forcing them to part with the property at a price greatly less than its value, it is within the power of a court of equity to extend the time within which the purchase price should be repaid.

3. SAME—CORPORATIONS—LIABILITY FOR FRAUD OF OFFICERS.
A corporation, whether private or quasi public, like a trust company or a national bank, cannot be allowed immunity for participation in a fraud whereby one has been forced to part with his property at less than its value, and it is immaterial whether the corporate participation was the result of action by a board of directors or by a president or other officer in actual and presumably authorized control.

4. SAME—PAROL TESTIMONY AS TO WRITTEN CONTRACT.
Proof of oral promises made at the time of a written contract is competent to show the good or bad faith of the parties in the transaction and in their subsequent conduct.

Appeal from the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

The question presented by this appeal is whether upon the facts averred in the amended bill, to which the circuit court sustained demurrers, the appellants, who were complainants below, are entitled to equitable relief. The original bill was filed on the 30th day of October, 1894, and a temporary injunction granted, which, after the filing of the answers, was dissolved on the ground that the averments of the bill were not sufficient. 71 Fed. 898. The amended bill fills 62 pages of the printed record, and differs from the original only in being more specific and full in its allegations of fraudulent purposes, promises, representations, and conduct on the part of Walsh and the Equitable Trust Company at the time of making and after the execution of the contracts of June 8, 1894. The following summary is deemed sufficient for an understanding of the case and of the questions to be determined:

After averment of the citizenship of the parties, it is alleged that in 1891 the appellants William L. Breyfogle, W. C. Winstandley, and one Thornton caused to be organized, under the laws of Kentucky, the Bedford Stone-Quarries Company, which for brevity will be called the "Stone-Quarries Company," with a capital of $1,000,000, which corporation acquired the stone-quarry properties of two other corporations, issuing for that purpose first mortgage bonds to the amount of $500,000, of which Thornton received $50,000, together with $100,000 of the capital stock, the appellants receiving the remaining $450,000 of the bonds and the remaining $900,000 of the stock, under an agreement with Thornton that, in consideration of the stock and bonds, they would acquire for the Stone-Quarries Company the property of the Oolitic Stone Company, one of the two corporations mentioned, which,

it is alleged, the appellants did acquire by the payment in cash to the Oolitic Stone Company, represented by Voris, of $50,000, and the delivery to it of $275,000 of said bonds, of which $250,000 were intended as security for the payment of the further cash sum of $150,000, which, by subsequent agreement, was reduced to $140,000, a part of which sum was paid with money borrowed through the appellee Walsh, and became a portion of the $542,720.95, for which the appellants on the 8th of June, 1894, were indebted to the Equitable Trust Company, as hereinafter stated; that the $50,000 cash payment to the Oolitic Stone Company was also borrowed by appellants from the Chicago National Bank, of which Walsh was president, upon the pledge of $175,000 of the bonds of the Stone-Quarries Company. The bill then avers that, after the purchase of the property of the Oolitic Stone Company, the construction of a short railroad being deemed necessary to fully develop the stone quarries, the appellants entered into an oral agreement with Walsh, by which all the money necessary to pay the balance of the purchase price due the Oolitic Stone Company (except $30,000 to be paid by appellants), and to construct and equip the railroad, and to improve and develop the quarries, should be "advanced and furnished, or caused to be advanced and furnished," by Walsh, as needed; that out of the profits of the business, or out of the proceeds of the sale of bonds of the Stone-Quarries Company and the Belt Railway Company (organized to construct the railroad), or out of the sale of the properties of the companies, there should be paid to the appellants the amounts advanced by them, and the value of their interest at the time the agreement was made, and the advances made or caused to be made by Walsh, and that the balance, being the profits of the enterprise, should be divided, one-half going to the appellants and one-half to Walsh; that to carry out this plan there was organized by appellants, with a capital stock of $250,000, the Bedford Belt Railway Company, which immediately issued first mortgage bonds to the amount of $250,000; that all these bonds were delivered to appellee the Equitable Trust Company, from which, through Walsh, $300,000 were borrowed and expended in the construction and equipment of the proposed railroad; but that, notwithstanding the completion of the railroad by means of the loans thus procured, Walsh refused in May, 1893, to advance the money necessary fully to complete the work of developing the stone quarries, by reason whereof the appellants were compelled either to advance or to incur liability for $50,000, whereby they became "so financially embarrassed and distressed as to be unable to advance any further money," and the Stone-Quarries Company, on June 20, 1893, executed an assignment for the benefit of creditors to appellant Breyfogle, who remained in possession of and conducted the business of the company until July 10, 1894, when its property was sold by order of the court for the sum of $7,700 to E. C. Ritsher, who purchased for the benefit of Walsh and the trust company. It is further alleged that Thornton's interest in the Stone-Quarries Company was purchased prior to September 1893, by appellants, for $48,000, of which Walsh caused to be advanced to appellants $40,000 upon the security of $50,000 of the Stone-Quarries Company's bonds; that by this purchase appellants became possessed of all the stock of the Stone-Quarries Company; that they also owned all the bonds of that company, and all the stock and all the bonds of the Belt Railway Company, subject only to the pledges thereof to secure the loans made to them through Walsh, and subject to the right which, as alleged, Walsh had in the profits of the enterprise.

It is averred that, for the advances thus obtained from time to time, the appellants executed notes to Walsh; that on the 31st of March, 1894, all these advances ($65,000 of the purchase price of the Oolitic Stone Company property being still unpaid) were represented by two notes signed by appellant Breyfogle, payable to his own order, and by him indorsed, one for $300,000, dated January 31, 1894, and due 15 days after demand, and the other for $166,677.95, dated March 31, 1894, and due 15 days after demand; that as collateral for these notes Breyfogle delivered all the stock and all of the bonds of the Belt Railway Company, and all of the bonds of the Stone-Quarries Company (the latter being subject to a prior pledge to secure the payment of the balance of $65,000 of the purchase price of the Oolitic Stone Company property), and also promissory notes of third parties for small amounts; that the principal notes

each contained the usual clause, in general use in Chicago, describing the collateral, and authorizing its sale at any time after maturity (or before, if, in the judgment of the legal holder, any such collateral should be depreciating in value), at public or private sale, "with or without notice or demand of any kind," and authorizing the legal holder of the note to purchase at such sale. The bill avers, further, that all of these notes were delivered to Walsh upon the understanding that, if used by him for the purpose of borrowing money to prosecute the work contemplated, he (Walsh) "would attend to the payment or renewal" thereof, and prevent the sale of the securities; that the note for $166,677.95 was held by the Chicago National Bank up to the 7th day of April, 1894, when the bank transferred the same to the Equitable Trust Company, which then held the note for $300,000, and that on the 10th day of April, 1894, the Equitable Trust Company demanded of appellant Breyfogle payment of the two notes, whereby, under the terms thereof, both (aggregating $466,677.95 and interest) became due and payable, and the Equitable Trust Company became in law entitled to sell the collaterals at private sale, with or without notice.

It is further averred that Walsh gave a false reason for not furnishing more money, pretending that on account of the panic he could not obtain it, when in fact he was able to procure all the money needed; that knowing the value of the properties, and being aware of the financial embarrassments of the appellants, on or about the 5th of April, 1894, he entered into a conspiracy with the Equitable Trust Company, of which he was president, to cheat and defraud the appellants of their interest in the property, and to procure from them without consideration a release from all liability on account of his agreement with them; that all subsequent steps and movements by him and by the Equitable Trust Company in the premises were planned with a view to effect the purpose of the conspiracy; that for that purpose the trust company, at the instigation of Walsh, demanded of Breyfogle the payment of his notes, and, Breyfogle having thereupon applied to Walsh to carry out his agreement and prevent the sale of the bonds and stock by the trust company, Walsh repudiated the agreement and threatened that unless the notes were paid he would cause the bonds and stock to be sold as provided in the powers of attorney contained in the notes; that thereupon the appellants applied to the trust company, but that neither that company nor Walsh would enter into any negotiation with them, unless they would abandon all claim that Walsh was liable to them as a partner in respect to the property, and that, unable to do otherwise, they assented to the execution of the three contracts of June 8, 1894, of which the following is the substance: The first agreement, which was between the trust company and the plaintiffs, was, in substance, a sale by the plaintiffs of the bonds and stock of the Stone-Quarries Company and of the railway company, also of two notes of $5,000 each of the railway company, three notes of the Stone-Quarries Company amounting to $14,898.41, and the note of Samuel Chandler for $1,800, in consideration of the cancellation and surrender to the plaintiffs of the two notes of $300,000 and $166,677.95, and the payment by the trust company of the balance due Voris, for the Oolitic Stone Company, under the contract between him and Breyfogle, which balance amounted to $65,000 and interest from April 1, 1894. By the second agreement, which was between Walsh and the appellants, each released the other from all claims and demands of every name and nature, and the appellants especially released Walsh from all claims against him as a partner. The third agreement was between the trust company and Breyfogle, representing the appellants, and provided for the repurchase from the trust company by Breyfogle of the bonds and stock of the Stone-Quarries Company and the railway company, the two notes of $5,000 each of the railway company, the three notes for $14,896.41 of the Stone-Quarries Company, and the note of Chandler for $1,800, the consideration of the repurchase being $542,720.95, with interest thereon at 6 per cent. from June 8, 1894, to the date of payment, and in addition thereto such sum or sums as should have been paid out by the trust company after the date of the agreement to pay any outstanding indebtedness of the Stone-Quarries Company or of the railway company, or to furnish working capital for the Stone-Quarries Company or for the railway company, or to purchase any lien or outstanding title, claim, or equity of redemption, in or

upon the property of either company, or to protect either company or the property of either, and which should not have been repaid to the trust company, together with interest upon all such sums at the rate of 6 per cent. per annum. Payments were to be made as follows: On or before November 1, 1894, $225,000, with 6 per cent. interest from June 8, 1894, to the date of payment; on or before January 1, 1895, $317,720.95, with 6 per cent. interest from June 8, 1894, to the date of payment, and in addition thereto all such sums as should have been paid out by the trust company for the purposes above mentioned. Time was declared to be of the essence of the agreement, and, upon the default of Breyfogle to make the payments above mentioned within the time provided by the agreement, the agreement was to be null and void, unless the trust company should otherwise expressly elect. In case the trust company elected not to declare the agreement null and void, it was required to commence suit to enforce the same against Breyfogle within five days after the default.

It is alleged that in the negotiations which ended in the execution of these contracts Walsh and the trust company repeatedly stated to Breyfogle that neither of them had any desire to acquire the property or to make any profit out of it, and promised that they would give appellants every possible aid in their efforts to raise money, would keep the agreements secret, and that if the property of the Stone-Quarries Company should be sold under the decree of the circuit court of Lawrence county, and should be purchased by Walsh or by the trust company, the purchase should inure to the benefit of the appellants; that the appellants relied upon these representations and promises, without which they would not have entered into the agreements; that immediately after the making of the agreements the appellants proceeded to endeavor to make some arrangement whereby they might be able to make the payments required by the agreement of repurchase, to which end Breyfogle opened negotiations with Messrs. Harvey Fisk & Sons, of New York, by which, if consummated, the appellants would have been able to obtain for their interest in the quarries property at least $400,000 over and above the payments to be made to the trust company; that the negotiations failed because of repeated violations of their promises by Walsh and the trust company, who shortly after the agreements were made entered into negotiations with divers persons, some of whom are named in the bill, for the purpose of preventing a sale of the property by the appellants, and, with a view of inducing them to refrain from dealing with the appellants, informed them of the nature and terms of the agreements, and of the financial embarrassments and distress of the appellants, and promised and held out to them that if they would not deal with appellants they could, after November 1, 1894, deal more advantageously with Walsh and the trust company; that at the instigation of Walsh a communication was sent to Harvey Fisk & Sons, to the effect that Breyfogle's statements to them in respect to the value of the property were false, though they were in fact true; that by this and by other representations, which are set out in detail, Harvey Fisk & Sons were induced to abandon the negotiations, and the appellants were prevented from effecting any disposition of the property; that the promises and representations made by Walsh and the trust company, in order to obtain an execution of the agreements by the appellants, were not made in good faith, but with an intent to violate them, for the purpose of preventing a repurchase of the property by the appellants; that although the agreement of sale purports to be an absolute conveyance, and although by the strict terms of the agreement of repurchase the trust company would, upon the failure of the appellants to make the payments within the time specified, be empowered apparently to declare the rights of the appellants in the property forfeited, yet in equity and good conscience the agreements of sale and repurchase are and always have been in fact only a mortgage, and the title to the stock and bonds has never been held by any of the respondents otherwise than in trust to secure the repayments to the trust company of any moneys that might be due it from appellants on account of the transactions mentioned; that all moneys advanced by the trust company, and interest thereon, have been paid to it by Walsh, but that, if that company has not been repaid in full by Walsh or otherwise, the appellants are ready and willing and offer to pay to it within such time as the court may decree

all such sums as upon an accounting had under the direction of the court shall be found to have been advanced by it over and above repayments; also to pay to Walsh, though he has no right to demand it, within such time as the court may direct, all such sums as may be found to be justly and equitably due him, and to perform any and all acts that may be decreed to be performed by them.

The prayer of the bill, so far as it need be stated, is that the agreement of release entered into between the plaintiffs and Walsh may be adjudged null and void; that the agreement of sale and the agreement of repurchase may be adjudged to have no other force or effect than a mortgage, and that the property may be decreed to be held in trust only for plaintiffs and Walsh and as security for the payment of the moneys advanced by the trust company, and not repaid to it, and for the satisfaction of the liabilities incurred by it; that an account may be taken of the moneys and properties advanced by plaintiffs and Walsh and the trust company in and about the property over and above the amounts, if any, received by them, or either of them, including the moneys paid to Voris, together with all outstanding liabilities incurred by Walsh and the trust company in and about the property; that the damages sustained by plaintiffs by reason of the failure of Walsh to advance the moneys necessary for the development and improvement of the property may be ascertained, and Walsh charged therewith; that the indebtedness of the Bedford Stone-Quarries Company may be ascertained, and the payment of the same provided for; that if, upon a just accounting, it shall appear that the trust company has not already received repayment in full, plaintiffs may be permitted to redeem the stock and bonds of the companies and the other property mentioned in the agreement of repurchase by paying to the trust company, within such time as the court may direct, such an amount as upon such accounting the trust company shall be entitled to receive from plaintiffs, which amount plaintiffs are ready and willing and offer to pay, and that the respective rights and interests of plaintiffs and Walsh in and to the property may be determined, declared, and adjusted in such manner as may seem equitable and just, and that the plaintiffs may have such other and further relief as to equity may appertain.

Hiram T. Gilbert, for appellants.

A. W. Green, Henry S. Robbins, A. F. Hatch, and Lockwood Honoré, for appellees.

Before WOODS, JENKINS, and SHOWALTER, Circuit Judges.

WOODS, Circuit Judge, after making the foregoing statement, delivered the opinion of the court.

The allegation in the bill that, in equity and good conscience, the agreements of sale and repurchase constitute a mortgage is at most only the statement of a legal conclusion, and whether tenable need not be considered, because it has not been relied upon in the argument here. The propositions asserted in the brief for the appellants are that the trust company, as a mortgagee, was bound to deal fairly with its debtor, and that its purchase of the equity of redemption will be set aside if consummated by oppressive or other unfair means; and that Walsh, being a partner of the appellants, was bound to exercise towards them the utmost good faith. The necessary implication is that the agreements are what they purport to be, contracts of purchase and of resale, and not the mere substitution of one form of pledge or security for another, and the contention is that they ought to be set aside because obtained by oppressive and fraudulent means. But, assuming that the averments are otherwise sufficient, the bill does not show a case for relief on that theory, because it is not alleged that the necessary steps were taken or offers made, before the

bringing of the suit, to place the parties in statu quo. The rule in that regard is too familiar to need restatement. The making of the agreements in question worked essential changes in the situation of the parties. Prior contracts were annulled. Instead of pledgee the trust company became owner. It released the appellants from personal obligation on the demands then held by it, and in addition bound itself to pay $65,000 to Voris. Walsh was released from liability, and at the same time surrendered his rights under the alleged agreement of partnership. To be entitled to a cancellation or rescission of the agreements it was therefore necessary that the appellants, before bringing the suit, should themselves have offered to cancel the agreements, should have returned or offered to return to the trust company the Breyfogle notes which had been surrendered, and have repaid or offered to repay to that company, with interest, whatever sums it had paid to Voris or otherwise had expended. They could not treat such sums as an addition to their debt to the trust company, and so retain a benefit from the agreements which they sought to have rescinded.

It follows that, if the appellants can have any relief upon this bill, it must be upon the assumption that the contracts of June 8, 1894, were valid and became conclusive of the status and rights of the parties at that time. We are of opinion that a case for relief on that theory is shown. The agreement for the resale of the property to appellants contains the harsh, though not illegal, provision that time shall be of the essence of the contract; and we quite agree with the proposition in the brief for appellants that, even had there been no promises by the trust company and Walsh that they would not interfere with efforts of the appellants to dispose of the property in order to obtain the money necessary to pay the purchase price as stipulated, it would have been bad faith on the part of Walsh to interrupt, as he is alleged to have done, the negotiations with Harvey Fisk & Sons, and, if by that or other like means the performance of the contract by the appellants within the required time was prevented, it ought not to be beyond the power of a court of equity to extend the time within which the purchase price should be paid. Whether in such a case, when the parties had dealt at arm's length, equity would interfere, is not the question presented. The case here is different. There had been previous relations between the parties, as it is alleged, of partnership and of mortgagor and mortgagee. It is shown that the purpose of Walsh and of the trust company was deceitful from the beginning; that, in order to induce the appellants to enter into the agreements, they made representations of their wishes and aims concerning the property which were false; that they made promises which they intended not to keep; and that the subsequent interference with the efforts of the appellants to dispose of the property was in pursuance of a conspiracy long before entered upon to cheat the appellants by forcing them to part with the property at a price greatly less than its alleged value. If the facts in this respect were as charged, there ought to be no question of the power of the court to give relief, both against Walsh and against the trust company represented by him in the transac-

tion. Not in justice or common honesty, nor upon any consideration of public policy, can a corporation, whether private or quasi public, like a trust company or a national bank, be allowed immunity for participation in a fraud, and, in such a case as this, it is immaterial whether the corporate participation was the result of action by a board of directors or by a president or other officer in actual and presumably authorized control.

It is urged on behalf of the appellees that, the contracts between the parties having been reduced to writing, all oral promises by Walsh and by the trust company are merged in the agreements, and are not to be considered. The general rule on the subject is familiar, and likewise the exception from the rule of purely collateral contracts, which may be left in parol; but the question here is not of the obligatory force of the alleged promises as such, but what do they show of the good or bad faith of the parties in the transaction in connection with which they were made and in their subsequent conduct? On that point whatever was said and done by Walsh, representing, as he did, the trust company, was clearly relevant and competent.

One form of appropriate relief, if the bill should be sustained by the proof, manifestly would be an extension of time beyond the date of the decree for the payment of each installment of the purchase price, with interest, according to the contract; and, if additional sums are found to be due, the payment thereof should also be required. The time allowed should be reasonable,—perhaps equal to but not greater than was originally agreed upon by the parties. Whether relief could be made effective in some other form, upon the theory of constructive trust, for instance, as defined in section 1053, Pom. Eq. Jur., quoted in Angle v. Railway Co., 151 U. S. 1, 27, 14 Sup. Ct. 240, has not been discussed by counsel, and need not now be considered. The decree below is reversed, with direction that the respective demurrers of Walsh and the Equitable Trust Company to the amended bill be overruled, and that further proceedings be had in accordance with this opinion.

HENSZEY et al. v. LANGDON-HENSZEY COAL MIN. CO.

(Circuit Court, E. D. North Carolina. March 26, 1897.)

1. RECEIVERS—PETITION FOR REMOVAL—MOTION FOR LEAVE TO INSPECT MINE.
A petition by a stockholder and bondholder of an insolvent company to inspect a mine either in person or by agent, with a view to having the receiver in charge thereof removed, is in the nature of a motion made for the production, by parties, of books or writings in their possession, or motion for inspection of writings or examination of parties before trial, and being made by a party in interest, and entitled to the knowledge sought, will be granted by a federal court.

2. SAME—EVIDENCE.
An inspection made pursuant to such a petition gives the party inspecting only the ordinary powers, and his report is subject to the same rules of evidence as the testimony of any other witness.