quate, and complete remedy may be had at law." And to such length have these provisions been extended that it has been held (Allen v. Car Co., 139 U. S. 662, 11 Sup. Ct. 682): "If the court, in looking at the proofs, found none of the matters which would make a proper case for equity, it would be the duty of the court to recognize the fact, and give it effect, though not raised by the pleadings nor suggested by counsel." And rightly so, for we are here dealing with the constitutional right of the citizen, and, as was said by Mr. Justice Campbell in Hipp v. Babin, 19 How. 278, "whenever a court of law is competent to take cognizance of a right, and has power to proceed to a judgment which affords a plain, adequate, and complete remedy, without the aid of a court of equity, the plaintiff must proceed at law, because the defendant has a constitutional right to a trial by jury."

Applying that principle to the case in hand, what have we? There can be no doubt that the title claimed by Mrs. Erskine is a purely legal one. There is no trust relation between her and the respondent. She need call to her aid no equitable principles to establish or enforce her title. If it exists, it is created wholly and solely by a written instrument accessible to all parties. Being purely legal, as distinguished from equitable, it can be established and enforced in a court of law. Nor are any special grounds for equity interference shown; there are no complicated accounts; and, moreover, the liability to account at all is incidental to and dependent upon the prior question of title. Discovery is prayed for in the bill. But, apart from the fact that the proofs disclose no call for such relief, it is to be noted that ordinarily discovery is not an independent ground of relief, but is incidental to and dependent on other grounds. Hare, Disc. §§ 6–8, and Story, Eq. Pl. § 331. Nor can the bill be sustained on the ground of avoiding a multiplicity of actions. Certain it is the original complainant was entitled to maintain ejectment for her undivided interest, and the act of April 13, 1807 (1 Brightly's Purd. Dig. p. 636, § 4), provides for the joinder of tenants in common in actions of ejectment in this state. Nor is the taking of the oil from the wells, under the facts of this case, to be adjudged such an irreparable injury as in some cases might warrant the interference of a court of equity by injunction. The respondent is concededly solvent, and the proofs tend to show that by the taking out of the oil on this tract it is prevented from being drawn away and taken out by other wells on adjoining lands. Moreover, in pending actions of ejectment the Pennsylvania statutes provide, by writ of estrepement, for all protection of land in litigation from spoliation.

After careful consideration, we are of opinion complainants' title is wholly a legal one, that ample remedy exists at law, that there are no special facts or circumstances in this case calling for the exercise of equitable jurisdiction, and that the bill is an ejectment one. With a disposition on our part to, if possible, retain jurisdiction to dispose of the case by construing the will, and end the controversy between the parties, we are unable to do so. The cases of Hipp v. Babin, 19 How. 278, Whitehead v. Shattuck, 138 U. S. 146, 11 Sup. Ct. 276, and others that might be referred to, block the way to a federal court assuming jurisdiction of what is in substance and real purpose an eject-

ment bill. If our conclusion in this regard is correct, the construction of the will of William Crawford must be passed upon in another case, and the propriety of our abstaining from any expression of our views thereon is apparent. A decree will be prepared dismissing this bill for want of jurisdiction, and without prejudice.

HAYDEN v. CHEMICAL NAT. BANK.

(Circuit Court, S. D. New York. May 15, 1897.)

NATIONAL BANKS—INSOLVENCY—REMITTANCES.

Remittances made by a national bank to its correspondents, in the ordinary course of business, before the commission of any act of insolvency, are not void under Rev. St. § 5242, though the bank is in fact insolvent at the time, and is closed by the bank examiner before the remittances are actually received by the correspondent banks.

Edward Winslow Paige, for plaintiff.
George H. Yeaman, for defendant.

WHEELER, District Judge. The Revised Statutes (section 5242) provide, in relation to national banks:

"Sec. 5242. All transfers of the notes, bonds, bills of exchange, or other evidences of debt, owing to any national banking association, or of deposits to its credit; all assignments of mortgages, sureties on real estate, or of judgments or decrees in its favor; all deposits of money, bullion, or other valuable thing for its use, or for the use of any of its shareholders or creditors; and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this chapter, or with a view to the preference of one creditor to another, except in payment of its circulating notes, shall be utterly null and void."

The Capital National Bank of Lincoln, Neb., had an account of remittances and drafts with the defendant in New York, varying from day to day. January 18, 1893, the account on the books of the defendant was overdrawn $84,486.19. On that day the Schuster-Hax National Bank of St. Joseph, Mo., remitted by mail $2,000 to the defendant for the credit of the Capital National Bank. On the 19th the Packers' National Bank of South Omaha, Neb., remitted to the defendant $5,000 for the credit and advice of the Capital National Bank, and the Capital National Bank remitted a package of 15 items of various sizes amounting to $815.79, another of 32 amounting to $2,935.60, and the account on the books of the defendant stood overdrawn $40,807.43. On the 20th the Capital National Bank remitted a package of 27 items amounting to $735, and probably on the 21st it remitted another similar package amounting to $833.64, and the account stood on the books of the defendant overdrawn $25,515.32. On the 22d, Sunday, the bank examiner took possession of the Capital National Bank and it went into liquidation. On the 23d the defendant received the remittances of $2,000 of the 18th, and of $5,000, $815.79, and $2,935.60 of the 19th, and of $735 of the 20th, which it credited to the Capital National Bank, and it received notice by telegraph from the bank examiner of the suspen-

sion; and on the 24th it received the remittance of $833.64, which it likewise credited, and which left the account overdrawn $13,317.94. The plaintiff is the receiver of the Capital National Bank, and this suit is brought to recover the amount of these remittances received by the defendant on the 23d, $11,486.39, and that received on the 24th, $833.64, as having been transferred by that bank contrary to the statute.

That the Capital National Bank had been insolvent for a long time next before these remittances is amply made to appear, and, if the prohibition had been made to turn upon insolvency, these transfers would unquestionably be void, and the defendant accountable for the proceeds; but the transfers would be as unquestionably good except for the statute, and only those made after an act of insolvency, or in contemplation thereof, are by that avoided. Till after these remittances the Capital National Bank was carrying on its business of banking in due course, without any act of insolvency shown to have been committed, and they were a part of that business, which was stopped by the bank examiner because of the bank's state of insolvency, and not because of any act arising from that state. Ultimately, but for this interposition, the bank must have been driven to such acts, but how soon cannot now be told. The transfers were complete when the remittances were mailed to the defendant, and must be considered as having been made in due course, and in continuation, of lawful business, and not in contemplation of committing any act of insolvency. These transactions were like the ordinary business of such a bank, done over the counter in the usual way, and for character they are to be compared with the transactions of such business, which seem to be valid. Roberts v. Hill, 23 Blatchf. 312, 24 Fed. 571.

The answer prays that, should an account be ordered, the plaintiff be decreed to pay to the defendant the amount due from the Capital National Bank, and such a decree is insisted upon in argument. That prayer in the answer would probably be insufficient for any affirmative relief to the defendant, but, whether so or not, the defendant is not entitled to anything from the plaintiff but its dividend, which cannot be decreed now. Bill dismissed.

BOSTON & M. R. R. et al. v. GRAVES et al.

(Circuit Court, S. D. New York. May 25, 1897.)

ABATEMENT AND SURVIVAL OF ACTIONS—CORPORATIONS—MISCONDUCT OF OFFICERS.

The liability imposed by the statutes of Maryland (Code Pub. Gen. Laws, art. 23, §§ 67, 69) on the directors and officers of a corporation who declare dividends rendering the corporation insolvent or impairing its capital, or who make loans to stockholders, is not a liability for wrongs to property rights and interests, such that the cause of action therefor survives against the representatives of a deceased director or officer, under the statutes of New York (2 Rev. St. N. Y. p. 447, § 1).

John S. Melcher, for plaintiffs.
William B. Hornblower, for defendants.