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.

WHEELER, District Judge. The Code of Public General Laws of Maryland provides (article 23, § 67):

"If the trustees, managers or directors of any such corporation shall declare and pay any dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, or would diminish the amount of the capital stock, they shall be jointly and severally liable for all the debts of the corporation then existing, and also for all that shall thereafter be contracted while they shall respectively continue in office, even although the whole amount of the capital of said corporation has been paid in."

And section 69:

"No loan of money shall be made by any such corporation to any stockholder therein; and if any such loan shall be made to any stockholder the officer or officers who shall make it, or who shall assent thereto, shall be jointly and severally liable for all the debts of the corporation contracted before the making of the said loan to the extent of double the amount of the said loan."

The laws of the state of New York provide (2 Rev. St. p. 447, § 1) that actions survive:

"(1) For wrongs done to the property rights or interests of another, for which an action might be maintained against the wrongdoer, such action may be brought by the person injured, or, after his death, by his executors or administrators, against such wrongdoer, and after his death against his executors or administrators, in the same manner and with the like effect in all respects as actions founded upon contracts."

And by Code Civ. Proc. § 1837:

"An action may be maintained as prescribed in this article against the surviving husband or wife of a decedent, and the next of kin of an intestate, or the next of kin or legatees of a testator, to recover to the extent of the assets paid or distributed to them for a debt of the decedent upon which an action might have been maintained against the executor or administrator."

And by section 1843:

"The heirs of an intestate and the heirs and devisees of a testator are respectively liable for the debts of a decedent arising by simple contract or by specialty to the extent of the estate; interest and right in the real property which descended to them from or was effectually devised to them by the decedent."

The bill in this case sets forth the formation and existence of such a corporation at Baltimore, by the name of the American Casualty Insurance & Security Company of Baltimore City; that Henry W. Slocum, Sr., of Brooklyn, N. Y., was a stockholder in and director of that corporation; that as such director, with other directors, he violated section 67 of that article of the Code of Maryland by declaring a dividend when the corporation was insolvent, and section 69 by making loans to stockholders to a large amount, and afterwards died, leaving a will by which he devised a large amount of real estate, and bequeathed a large amount of personal estate, to the defendant Henry W. Slocum, Jr., who has received the same by distribution under the will; that the orators are creditors of the corporation, and bring this bill in behalf of themselves and all other creditors against Henry W. Slocum, Jr., among others, to reach the property of the testator now so held by him. The case has now been heard on his demurrer to the bill, and the question is whether, under these laws of New York, where this suit is brought, the cause of action survives against the executors of his testator, and can be enforced

against him, so as to reach this property, real and personal, received by him under the will. Under these statutes of New York, no actions survive except such as are for wrongs to property rights and interests. Neither of these sections of that article of the Maryland Code extend to or cover any wrong done to any property of the plaintiffs, or would give them any right of recovery against Henry W. Slocum, Sr., for anything else than his personal conduct, as director, in the management of the corporation, without reference to any amount of the property of the corporation to be affected, or making the right of recovery proportional to the amount. The cause of action is of entirely a personal character, depending entirely upon the personal conduct of the director, as such, in creating the liability. The consequences of this conduct may effect a right of recovery which would result in property to the plaintiffs, but the action is not founded upon any such effect to any other property than such as may be acquired by such a recovery. In such cases, under similar statutes, the cause of action would not seem to survive. Read v. Hatch, 19 Pick. 47; Winhall v. Sawyer's Estate, 45 Vt. 466; Zabriskie v. Smith, 13 N. Y. 322; Stokes v. Stickney, 96 N. Y. 323; Hegerich v. Keddie, 99 N. Y. 258, 1 N. E. 787; and Witters v. Foster, 23 Blatchf. 457, 26 Fed. 737. Upon these authorities, without attempting to cite all, or nearly all, of those that bear upon this question, the bill, which sets out no other ground of action against Henry W. Slocum, Jr., seems to be insufficient. Demurrer sustained.

FISHER et al. v. GRAVES et al.

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

CORPORATIONS—LIABILITY OF DIRECTORS.

A director of a corporation is not liable for the misconduct of co-directors, not participated in by him as a wrongdoer, and a bill which seeks to fix upon a director liability for negligent acts of the board, but does not charge him personally with any neglect, charging only neglect by the board of directors, without mentioning him, and alleging that information showing the character of their acts was accessible to all the directors, is insufficient.

Camillus G. Kidder, for plaintiffs.
William B. Hornblower, for defendants.

WHEELER, District Judge. This suit is like that of Railroad Co. v. Graves, 80 Fed. 588, as to the making of loans to stockholders of the American Casualty Insurance & Security Company of Baltimore City, except that the plaintiffs are alleged to be so receivers and assignees of the property and rights of action of the corporation as to represent it; and the bill also alleges great loss to the corporation by reason of these loans, and:

"Seventeenth. That the said loans, and each thereof, were not only illegal, and in direct contravention of the statutes of said state, and expressly prohibited by the charter of said corporation, as has been hereinbefore set forth, but the same constituted investments of the corporate funds which were un-