

soon as possible on or before four months. Said McLean to renew notes with Lobdell, Farwell & Co., on Diamond Match stock, par value of stock being \$212,000, until it is returned to her. It is further understood and agreed that Mrs. Richardson is to have one-half of the stock in the Florida, Georgia & Western Railroad, half the stock in the Interstate Land Construction Company, and one-half the stock in the Gulf Stream Phosphate Company,—all of the state of Florida. She already having two-fifths of the stock of the railroad and two-fifths of the stock of the Interstate Land Construction Company, she therefore is to receive one-tenth more in each of these companies. In the Gulf Stream Phosphate Company she has not received any, but is to receive one-half. These stocks are to be issued to her just as soon as the companies can be reorganized, and no delay beyond the necessary delay of doing this. It is further understood and agreed that said Mrs. Richardson is in no way to interfere with my operations, or this contract is null and void. It is further agreed that I, C. W. McLean, agree to deed the phosphate lands that stand in my name at this date to the Gulf Stream Phosphate Company as soon as organized, without any unnecessary delay."

McLean continued from time to time to get money from Nathan C. Pond, to whom he transferred, December 14, 1891, two policies of insurance on McLean's life; and on April 2, 1892, he deeded to Louis K. Pond, the son of Nathan C. Pond, a considerable amount of the Florida lands theretofore acquired. The policies of insurance and the lands deeded to Louis K. Pond were subsequently conveyed to Sarah E. Pond, who was the wife of Nathan C. Pond, and the mother of Louis K. Pond. In connection with the Florida enterprises, McLean had dealings with James M. Mayo, Sidney I. Wailes, and John C. Daves.

On March 27, 1893, the complainant, E. Jennie H. Richardson, exhibited her bill against Christopher W. McLean, Nathan C. Pond, Louis K. Pond, Sarah E. Pond, James M. Mayo, Sidney I. Wailes, and John C. Daves. To this bill, only Nathan C. Pond, Sarah E. Pond, and Louis K. Pond answered. They filed a joint and several answer. The issues as to all the other defendants were found in favor of the complainant by the decree of the circuit court, and there is no complaint of so much of that decree. In reference to the defendants who answered, the bill charges as follows:

"That the said defendant McLean, in violation of said agreements with your said oratrix, and in violation of his said trust, has purported to convey or mortgage to the defendants Louis K. Pond or Sarah E. Pond certain portions of said trust lands above mentioned, purchased as aforesaid with the funds of your oratrix, or with funds procured by said McLean upon her stocks as collateral, as aforesaid. Said portions of said lands so conveyed or mortgaged to said defendants Louis K. Pond or Sarah E. Pond, or one of them, are described as follows, to wit: \* \* \*. That your oratrix charges and alleges that the said transaction between the said McLean and the said Ponds was a loan from the said Ponds, or one of them, or from one Nathan C. Pond to the said McLean, the exact amount of which your oratrix cannot state without discovery from the said defendants; but she charges and alleges that the same was not more than the sum of twenty thousand dollars, and the defendants should be required to make discovery of the true amount so paid by the said Ponds, or either of them, to said McLean. Your oratrix further charges and alleges that any deed or deeds executed by the said defendant McLean to the said Louis K. Pond, or to the said Sarah E. Pond, were intended to secure the repayment of a loan of money made by the said Ponds, or one of them, or Nathan C. Pond, to the said McLean; and any such deed or deeds are, in law and equity, mortgages subject to redemption, and do not convey to the said Ponds, or either of them, the complete title in fee in and to said lands described in said deed or deeds. That at the same time that

the said mortgages, deed, or deeds were executed by said defendant McLean to said defendants Ponds, and at the same time that the said money, if any, was paid by the said defendants Ponds to the said defendant McLean, they or Nathan C. Pond obtained from him, and he assigned to them, or one of them, certain policies of insurance upon his life, as additional security to secure the repayment to them, or one of them, of the money so advanced by them, the said Ponds, to him; thus evidencing that the true nature of the transaction between the said Ponds and the said McLean was a loan of money by them to him, for which he was giving them security upon said lands and upon said life insurance."

The prayer of the bill, as against the defendants Pond, is as follows:

"That an accounting be had of what amount, if any, was paid or advanced by defendants Louis K. Pond or Sarah E. Pond or Nathan C. Pond to the defendant McLean, and that the deed or deeds from the said McLean to said defendants Ponds or either of them, be decreed to be mortgages, and they be decreed to hold the title to said property in trust for your oratrix, in place and stead of said McLean, as trustee, or on payment to them by your oratrix of the amounts found paid by them to the defendant McLean; that they be decreed to convey and transfer to your oratrix the title to said lands so conveyed to them by defendant McLean, and to assign and transfer to your oratrix any and all insurance policies upon the life of said McLean, or other securities transferred to them by said defendant McLean."

On the issues joined between the complainant and the defendants Pond, the circuit court decreed as follows:

"It is further ordered, adjudged, and decreed that the deeds from the said defendant McLean to defendant Louis K. Pond \* \* \* were, in effect, mortgages only upon said lands, given to secure the defendant Nathan C. Pond for moneys advanced to said defendant McLean by said defendant Nathan C. Pond, prior to the 24th day of May, 1892, for the purpose of carrying on the enterprises mentioned in the contracts (Exhibits A, B, and C) between said complainant and said defendant McLean; and that said Louis K. Pond held said mortgages for and on account of moneys loaned and obligations incurred by said defendant Nathan C. Pond and Louis K. Pond, without any personal interest, right, or title thereto in said Louis K. Pond, except as aforesaid. \* \* \* It is further ordered, adjudged, and decreed that this cause be referred to Francis P. Fleming as a special master in chancery, for the purpose of taking proofs, and stating the account, of the amount of such advances and loans and obligations made by said Nathan C. Pond and Louis K. Pond to the defendant Christopher W. McLean, prior to the 24th day of May, 1892, for the purpose of carrying on the enterprises embraced in the contracts (Exhibits A, B, and C) between complainant and said defendant McLean above mentioned, and taxes on said lands; and that, in taking said account, the said master shall deduct from the amount of any such advances the sum of \$10,000, received by the said defendants Ponds, or either of them, from the surrender of two certain life insurance policies held by them upon the life of said Christopher W. McLean, as security for said advances [with directions as to allowing interest]."

The master took testimony, and stated the account, as required by the reference, and, by his report, showed a balance due Nathan C. Pond, or his assigns, on February 3, 1896, of \$35,877.83, which, with interest up to the date of the decree, July 28, 1896, amounted to \$36,924.27, in addition to which an amount of \$657.43, for taxes paid by Sarah E. Pond, and interest thereon to date of the final decree, were found by the final decree to be a charge on the lands in question, which lands, it was adjudged, should be reconveyed by said Nathan C. Pond, Louis K. Pond, and Sarah E. Pond to the complainant upon her payment of the charges above fixed, or, in the event of such pay-

ment being made, and the failure to convey, the decree was to operate with the same force and effect as such conveyance; "and, upon the failure to make such payment within six months, said right of redemption shall be considered forfeited."

As we construe the record in this case, the interlocutory decree entered April 15, 1895, found every issue made by the complainant's bill in favor of the complainant, and a careful examination of the testimony satisfies us that the directions given by the judge of the circuit court to the special master for stating the account were such as the case required, and appear to have been satisfactory at the time to all the parties, or at least were acquiesced in by all. Thereafter a large amount of proof was taken before the master. Much of it received by the master, subject to objections made at the time by counsel for the defendants, was impertinent to the investigation the master was charged to make, and was doubtless disregarded, as it should have been, by the judge of the circuit court when he came to act upon the complainant's exceptions to the master's reports. After a laborious and careful examination of the record in this case, we find nothing that would justify us in coming to a different conclusion than that expressed in the decree appealed from. It appears to us to be a case presenting only questions of fact. There seems to be no dispute between the parties (and there could hardly be) as to the law applicable to the case made by the bill and answer and proof. The decree of the circuit court, therefore, is affirmed.

---

CITY NAT. BANK OF QUANAHA, TEX., v. CHEMICAL NAT. BANK OF ST. LOUIS, MO.

(Circuit Court of Appeals, Fifth Circuit. May 11, 1897.)

No. 522.

**BANKS AND BANKING—BORROWING BY CASHIER—LIABILITY OF BANK.**

The cashier of the Q. Bank, who, in addition to his usual powers as such, was allowed by the officers to have full control of its business, applied to a bank in another city for accommodation, sending to the latter bank what purported to be the signatures of the officers of the Q. Bank and a resolution of its directors authorizing him to borrow money and rediscout paper. Thereafter loans were made to the Q. Bank on its notes, signed by the cashier in its name. It was customary for banks in the region where the Q. Bank was located to borrow at certain seasons, and everything connected with the transaction was apparently done in the usual and regular course of business. *Held*, that the Q. Bank was liable on the notes signed by the cashier, though it afterwards appeared that the signatures of the officers and the resolutions sent by him to the lending bank were forgeries, and the proceeds of the loans were used by him for his own benefit.

Error to the Circuit Court of the United States for the Northern District of Texas.

Duncan G. Smith, for plaintiff in error.

J. E. Gilbert, for defendant in error.

Before PARDEE and McCORMICK, Circuit Judges, and NEWMAN, District Judge.

NEWMAN, District Judge. In this suit by the Chemical National Bank of St. Louis, Mo., against the City National Bank of Quanah, Tex., the plaintiff by its petition sought to recover against defendant on certain promissory notes executed by the defendant bank through its cashier, William F. Brice. There was also an account in the petition for money loaned, covering the same transaction as that embodied in the notes. The City National Bank defended on the ground that the action of Brice was not its action, and that it never made the loans or executed the notes, and that the transaction by Brice was for his personal benefit, and did not inure to the benefit of the bank in any way. The record discloses the fact, which is undisputed, that Brice was the cashier of the City National Bank, and that in 1894 he applied to the cashier of the Chemical Bank for accommodations, proposing to keep a balance in the Chemical Bank, and to send it the collections in St. Louis of the City National Bank. Brice also sent to the Chemical National Bank, to be used for comparison, what he represented to be, and what purported to be, the signatures of the officers of the City Bank; also what purported to be a resolution of the directors of the City Bank, authorizing him as cashier to borrow from time to time, and to rediscount with the Chemical Bank, the whole or any part of \$10,000, and to deposit as collateral paper made by the customers of the City National Bank. The correspondence resulted in an agreement between the cashiers of the two banks, and on August 27, 1894, a note for \$5,000 was sent by Brice to the Chemical Bank. This note was signed "City National Bank, by William F. Brice, Cashier," with the seal of the bank affixed. Certain collateral, amounting to \$7,640, consisting of what purported to be notes payable to the City Bank, was forwarded with this note. Subsequently a note similarly signed was made on September 27, 1894, for a like amount, with which collateral, or what purported to be collateral, amounting to over \$8,000, was placed. The proceeds of these notes, when discounted by the Chemical Bank, were placed to the credit of the City Bank, but unquestionably a large proportion of the amount was used by Brice for his individual benefit. Soon after these transactions 3,000 silver dollars were sent by the Chemical Bank, on a telegram requesting the same, signed "City National Bank," and this silver, according to the evidence, went into the vaults of the City Bank. There was considerable evidence in the case, but it need not be set out in detail, as the above statement embraces the material facts necessary to an understanding of the issues involved. The court directed a verdict, under all the evidence in the case, for the plaintiff, and the question presented is, was this action of the court right?

Not only did Brice, the cashier of the City Bank, have the usual powers of a cashier,—of general management of the bank's business as to loans, rediscounts, etc.,—but the testimony of the president shows that the actual management of the City Bank was left almost entirely to Brice after April 2, 1894. Brice seems to have been left by the president and directors of the bank, in connection with his son, as assistant cashier, in full control of the bank's business. The letters written by Brice in reference to loans from the Chemical