pay a debt of her husband. Aside from this, I am of opinion that it would have been the duty of the Citizens' Bank to honor the check when presented, even if the complainant had known that it was drawn to pay a debt of her husband. On December 5, 1892, she drew her check on the Citizens' Bank, payable to the order of F. B. Field, for $650. This check was presented by, and was paid to, her husband, and he used the money for his own exclusive benefit. In my opinion, she had a right to give the money represented by this check to her husband, if she chose to do so. If she gave the check to him to draw the money and to bring it to her, and he betrayed his trust, I do not think the complainant can be charged therefor. The money drawn out on the above-mentioned checks drawn by her amounts to $4,032.56, being $32.56 in excess of the amount of the loan, as evidenced by the note and mortgage in suit. The exceptions to the master's report will therefore be overruled, and there will be a decree for the principal sum of $4,000, with the interest thereon to this date, to which will be added an allowance of $500 for attorney's fees. The decree will be for $6,124.89.

RYAN v. SEABOARD & R. R. CO. et al.

(Circuit Court, E. D. Virginia. December 4, 1897.)

PROCESS—SUBSTITUTED SERVICE.

A suit brought by an assignee of a specified certificate of stock, which is physically within the district, seeking to establish his ownership thereof, and alleging that its custodian had wrongfully refused to deliver it to him, but fraudulently surrendered it for cancellation, and procured a new certificate in his own name, and which prays for the delivery to complainant of the original, and a cancellation of the spurious reissue, states an equitable cause of action, and falls within the act of March 3, 1875 (18 Stat. 470) § 8, authorizing service of process upon absent defendants by publication or without the district.

This was a bill in equity by Thomas F. Ryan against the Seaboard & Roanoke Railroad Company and others to establish title to, and secure possession of, certain shares of corporate stock.

Henry Crawford, for complainant.

Wm. A. Fisher and Watts & Hatton, for defendants.

SIMONTON, Circuit Judge. The bill in this case, among other things, alleges that, in consequence of a pooling agreement made between certain shareholders in the Seaboard & Roanoke Railroad Company, one Theodore Cooke, a subscriber thereto, forwarded to Louis McLane, chairman of the committee, original certificate No. 754, for 153 shares in this company; that he executed in blank an assignment on the back of the certificate; that subsequently he, for value, sold, and by a proper instrument in writing assigned, the certificate No. 754 to complainant; that after his purchase of the certificate complainant demanded the certificate No. 754 from McLane; that McLane refused to return it to him. It then charges that, after such demand for the return of the certificate, the committee,

who are Louis McLane and Legh Watts, the other member, Moncure Robinson, being now deceased, who were not the owners of the said certificate No. 754, and had no beneficial interest therein whatever, illegally and fraudulently filled up the assignment on the back of the certificate, causing the same falsely to recite that it had been sold, assigned, and transferred, for value received, by said Cooke to the said Louis McLane, chairman, and illegally and fraudulently, and without authority, surrendered said certificate to the officers of the Seaboard Railroad Company, at Portsmouth, Va., for cancellation, and obtained a new certificate in his own name; that the said certificate No. 754, originally issued to said Cooke and by him sold to complainant, is in the custody of the treasurer of the company at Portsmouth, within this district. The prayer of the bill, among other things, is that the complainant be declared the owner of certificate No. 754; that all reissues heretofore made, of certificates for the shares therein named, be declared void. This, then, is for the delivery to complainant of a certain defined, designated, certificate of stock within this district, in which he claims property, and the possession of which is necessary for the assertion of his rights. It is not for a certificate held or owned by Cooke, nor for the new certificate issued to Mr. McLane upon the surrender of certificate No. 754, but for certificate No. 754 itself, and to the complete assertion of his rights the aid of a court of equity is necessary. He finds authority for this in Merritt v. Barge Co., 24 C. C. A. 530, 79 Fed. 228. This certificate No. 754, the possession of which he seeks, is personal property.

The defendants file their pleas to the jurisdiction upon the ground that Richard Curzon Hoffman, Louis McLane, Andrew C. Trippe, J. Livingston Minis, and Charles D. Fisher are citizens of the state of Maryland, nonresident in this district, and that the Raleigh & Gaston Railroad Company is a citizen of the state of North Carolina, and nonresident in this district. A press of engagements prevents an extended discussion of this matter. So far as the claim for the delivery of the certificate No. 754 is concerned, inasmuch as that is within the district, personal property, the title to which is clouded and possession of which is sought, the bill is within the act of 1875. As Mr. Hoffman is president of the company, holding the certificate whose action is necessary to obtain full relief respecting it, and as Mr. McLane has a certificate issued upon surrender of this certificate No. 754, they are parties who can be served notwithstanding their nonresidence. The pleas based upon their presence as parties are overruled, and the defendants have leave to answer over. With regard to the other defendants, the pleas are sustained, and the bill as to them dismissed.

PENN MUT. LIFE INS. CO. v. UNION TRUST CO. OF SAN FRANCISCO, CAL., et al.

(Circuit Court, N. D. California. December 15, 1897.)

No. 12,263.

1. INTERPLEADER—RELATIONS OF CO-DEFENDANTS—EFFECT OF PLEADING AS EVIDENCE.
   Two adverse claimants to a fund, who are joined as defendants to a bill of interpleader, occupy, as between themselves, the position of complainant and defendant, and a sworn denial by one of them of the allegations of a cross bill filed by the other has the same effect as evidence as though contained in an answer to an original bill.
2. LIFE INSURANCE—ASSIGNMENT OF POLICY—CONSTRUCTION.
   The holder of a life policy assigned the same to a third person, "if she survive him; otherwise to such other beneficiary, having an insurable interest on the life of the insured, as the insured may thereafter in writing nominate, with full power to the insured to change or alter or cancel this assignment at any time." *Held*, that such assignment was not absolute, and the reservation of the right to change or cancel applied to the assignment in which it was contained, and not to the one appointing a successor to the assignee.
3. SAME—REASSIGNMENT—UNDUE INFLUENCE.
   Neither advice given by a physician to his patient as to his reassignment of a life insurance policy, nor assistance rendered him in carrying out such advice, constitute undue influence, unless the influence so exerted is sufficiently strong to substitute the will of the physician for that of the patient, and control the latter's action in the matter.

Rothchild & Ach, for complainant.
Platt & Bayne, for respondent Union Trust Co. of San Francisco.
Cannon & Freeman, for respondent Theresa Abell.

MORROW, Circuit Judge. This is a bill in interpleader brought by the Penn Mutual Life Insurance Company against the Union Trust Company of San Francisco and Edwin R. Dimond, executors of the last will and testament of William H. Dimond, deceased, and Theresa Abell. The controversy is with respect to the moneys due on a policy of insurance written by the complainant on the life of W. H. Dimond for the sum of $10,000. The policy is technically known as a "fifteen-year endowment trust certificate." The insured, W. H. Dimond, died in New York City on June 18, 1896, and the moneys due upon the policy in question were claimed both by the executors of the last will of the deceased, on the one hand, and by Mrs. Theresa Abell, on the other. The complainant brought this suit of interpleader against these adverse claimants, and, under the interlocutory decree of this court, made on July 10, 1897, deposited the sum of $6,079.05 in the registry of the court as the amount due on said policy. After the suit had been instituted, Edwin R. Dimond, one of the defendants and one of the executors of the last will of the deceased, resigned his trust as such, and was subsequently dismissed from the case. The present controversy, therefore, lies between the remaining executor, the Union Trust Company of San Francisco, and Mrs. Theresa Abell. The Union Trust Company answered, and, after setting out the policy as it is set forth in the bill of interpleader, averred that on June 8, 1893, the insured, W. H.