

ing that the course asked for by him was proper at this stage of the litigation. Authorities have been presented showing the general right of a shareholder in an action against the corporation to an examination of its books and papers. These authorities were unnecessary as the general rule is well understood and was not disputed at the argument. No authority, however, has been presented or found by the court, where permission has been given an expert accountant to make the examination in the circumstances surrounding this case. Until such an authority is produced the court must decline to take a seemingly unprecedented and unnecessary course.

The defendants have not disputed the proposition that the bill, even if the demurrers were sustained, might be maintained as a bill for an accounting. If the litigation proceeds upon this theory the cause is now at issue and testimony can be taken in the ordinary way before any of the examiners of this court. A subpoena duces tecum will produce all the books and papers of the defendants before such examiner, and they can there be examined by the complainant or his expert in the usual course of equity proceeding. The motion to inspect the books is denied.

KIMBALL v. DUNN et al.

(Circuit Court, S. D. New York. October 31, 1898.)

NATIONAL BANK IN CHARGE OF EXAMINER—LEVY OF EXECUTIONS.

The fact that a national bank, for which no receiver has yet been appointed, is in charge of an examiner appointed by the comptroller to investigate its affairs, does not exempt its tangible assets from levy under execution upon final judgment.

This was a suit in equity by William H. Kimball, as examiner in charge of a national bank, against Thomas J. Dunn and others, to enjoin the levying of an execution on the property of the bank. The cause was heard on a motion for a preliminary injunction.

Herman Aaron, for the motion.

George Coggill, opposed.

LACOMBE, Circuit Judge. The statutes provide for the appointment of a receiver of a national bank. Rev. St. U. S. § 5234. But it appears that in the cause at bar no receiver has yet been appointed. I am unable to assent to the proposition that because the comptroller of the currency, in conformity to the provision of section 5240, has appointed plaintiff as a suitable person to make an examination of the affairs of the bank, plaintiff thereby became a temporary receiver. Until the comptroller decides to put the bank into the hands of a receiver, under section 5234, there is nothing in the statutes to support the contention that its tangible assets are exempt from levy under execution upon final judgment. Section 5242, by its terms, applies apparently only to "attachment, injunction, and execution * * * before final judgment." Motion denied.

BARCUS et al. v. GATES et al.

(Circuit Court of Appeals, Fourth Circuit. November 1, 1898.)

No. 271.

1. **CORPORATIONS—ISSUANCE OF STOCK—STATUTE REQUIRING FULL PAYMENT.**
The effect of the statutes of Virginia relating to stock in corporations, in providing that shares shall not be sold to subscribers for less than their par value, is simply to render any agreement between the corporation and the stockholder ineffective to relieve the latter from full accountability, to the extent of the par value of his stock, in favor of creditors of the corporation.
2. **SAME—EFFECT OF ISSUANCE OF STOCK FOR LESS THAN PAR.**
In the absence of a statute inflicting a penalty for issuing or receiving stock in a corporation for which less than its par value has been paid, such action is not fraudulent, and does not involve moral turpitude, which will deprive the stockholder of a standing in a court of equity, to ask a rescission of the contract of subscription, and a dissolution of the corporation, on the ground that it was fraudulently conceived by its promoters for the purpose of deceiving and defrauding certain stockholders.
3. **SAME—CONTRACT OF SUBSCRIPTION—RESCISSION FOR FRAUD.**
A court of equity has jurisdiction to afford relief to one who has been induced, through the fraud of the promoters of a corporation, to become a subscriber to its stock, and may rescind the contract, though fully executed, and compel restitution.
4. **EQUITY—PLEADING—MULTIFARIOUSNESS.**
A bill is not multifarious because there are several causes of action stated, if they grow out of the same transaction, and all the defendants are interested in the same right, and the relief against each is of the same general character.
5. **SAME—SUIT BY STOCKHOLDER FOR FRAUD—RELIEF AGAINST OTHER STOCKHOLDERS.**
A bill was filed by stockholders in a corporation against the corporation and other stockholders, alleging that the latter fraudulently promoted and organized the corporation for the purpose of selling to it, at a grossly excessive valuation, certain land owned by them, which they falsely represented to be valuable for its purposes, but which in fact, as they knew, was worthless for such purposes and of very little value for any; that complainants were induced by such fraudulent representations to become subscribers to the stock of the corporation, and paid for such stock, and the amount so paid was withdrawn by the defendant stockholders in payment for said land. The bill prayed, as relief, that the corporation be adjudged insolvent and dissolved; that a receiver be appointed, and its property distributed after paying its debts; that the contracts of subscription of complainants be rescinded, and the remainder due them thereon, after distribution of the property of the corporation, be recovered from defendant stockholders. *Held*, that such bill was not multifarious, all the rights claimed and relief demanded being based on the same fraudulent scheme on the part of the individual defendants.
6. **CORPORATIONS—SUIT BY STOCKHOLDERS—CONDITION PRECEDENT.**
No demand by a stockholder on the officers of a corporation to bring a suit against another stockholder is required, under equity rule 94, to enable the stockholder to maintain a suit in his own name, when the right of action is one which the corporation could not enforce in its entirety.

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

This is an appeal from a decree sustaining the defendants' demurrer and dismissing the bill of complaint. The complainants