PATTERSON v. THOMPSON et al.

(Circuit Court, D. Oregon. December 3, 1898.;

No. 2,459.

1. LIMITATION OF ACTIONS—COMMENCEMENT OF ACTION—STATUTE OF OREGON.
   The liability of directors of a bank, under Hill's Ann. Laws Or. § 3231,
   which makes such directors who vote for the declaration of a dividend
   when the bank is insolvent "jointly and severally liable for the debts of
   the corporation then existing or incurred while they remain in office," is
   penal in its nature, and the directors are not, as to such liability, "joint
   contractors or united in interest," within the meaning of section 14 of such
   Laws, providing that an action shall be deemed commenced as to each
   defendant when the complaint is filed and the summons served on him or
   on a co-defendant, who is a joint contractor or united in interest with
   him; hence an action to enforce such liability is not commenced as to a
   particular defendant until the service of summons on him.

2. SAME—DEMURRER—FACTS APPEARING ON FACE OF COMPLAINT.
   Under Hill's Ann. Laws Or. § 67, which authorizes a demurrer when
   it appears on the face of the complaint that the action has not been
   commenced within the time limited by the Code, it being further provided
   by section 14 that the action shall be deemed commenced when the com-
   plaint is filed and the summons served, the complaint and writ must be
   read together, and what appears from the two will be deemed, for the
   purposes of such demurrer, to appear on the face of the complaint.

On Demurrer to Complaint.

U. S. G. Marquam, for plaintiff.
Cyrus A. Dolph, for defendants.

GILBERT, Circuit Judge. Walter F. Burrell, one of the defend-
ants, demurs to the complaint for the reason that it appears upon the
face thereof that as to him the action was not commenced within the
time limited by the Code of Civil Procedure of the State of Oregon.
The action is brought to enforce the statutory liability which is im-
posed upon directors of banking corporations in cases where they have
declared dividends of the funds of insolvent banks. Hill's Ann. Laws
Or. § 3231. In the case of Patterson v. Thompson, 86 Fed. 85, re-
cently decided in this court, it was held that the statutory liability
is penal in its nature, and that the three-years statute of limitations
applies. It is alleged in the complaint in the present case that on
May 10, 1892, the plaintiff deposited $978.33 with the Portland Sav-
ings Bank, of which bank the defendants were directors, and for
which sum the bank gave him a certificate of deposit payable on May 1,
1895. The complaint was filed on March 26, 1898. On that day serv-
ice of the complaint and summons was made upon one of the defend-
ants, but summons was not issued against the defendant Burrell until
June 16, 1898, and was not served upon him until June 22, 1898.
The Annotated Laws of Oregon (section 67) provide that a defendant
may demur to the complaint when it appears upon the face thereof "that
the action has not been commenced within the time limited by this
Code." Section 14 provides as follows: "An action shall be deemed
commenced as to each defendant when the complaint is filed and the
summons served on him, or on a co-defendant who is a joint contractor
or otherwise united in interest with him." It is clear that the de-

fendants in this case are not joint contractors or united in interest.
Their liability is penal, and is created by a statute which declares that
the directors who vote for the illegal dividend "shall be jointly and
severally liable for the debts of the corporation then existing or in-
curred while they remain in office." Section 3231. The plaintiff con-
tends, however, that the defendant cannot avail himself of the statute
of limitations on demurrer, for the reason that it does not appear
upon the face of the complaint that the action was not brought within
the period limited by the statute. The complaint does show, how-
ever, the date when the cause of action accrued. It is not necessary
to decide whether the action could have been commenced before the
date when the deposit fell due. It is clear that upon that date, if not
before, the cause of action had accrued. In order to determine the
date of the commencement of an action with reference to the statute
of limitations, it is necessary to know at what date the summons was
served. The date appears upon the summons. It is there shown that
not only was the summons not served, but that it was not issued, until
after three years from May 1, 1895. The writ and the complaint
must be read together, and what appears upon the complaint and the
writ will, for this purpose, be deemed to appear on the face of the
complaint. Lambert v. Manufacturing Co., 42 W. Va. 813, 26 S. E. 431.

The demurrer must be sustained.

In re LEONG YOUK TONG.

(Circuit Court, D. Oregon. December 3, 1898.)

No. 2,507.

ALIENS—EXCLUSION OF CHINESE—REVIEW OF DECISION OF COLLECTOR.
   Where an alien has been denied admission to the United States under
   the Chinese exclusion act, upon grounds therein prescribed, and has exer-
   cised his right of appeal to the secretary of the treasury, by whom the
   decision of the collector has been affirmed, a court is without power on
   habeas corpus to review such decision on the ground of irregularity in
   the taking of the testimony by the collector, or his refusal to receive cu-
   mulative evidence offered by the petitioner. The manner of conducting
   the hearing is not prescribed by the statute, and the discretion of the
   collector in that regard is not subject to control by the courts.

This is a hearing on a writ of habeas corpus.

E. P. Mays and Charles F. Lord, for petitioner.
John H. Hall, for the United States.

GILBERT, Circuit Judge. A writ of habeas corpus was issued on
behalf of Leong Youk Tong upon a petition which alleged that he
was unlawfully deprived of his liberty under authority of an order
made by T. J. Black, collector of customs for the port of Portland.
It was alleged in the petition that the petitioner was and had been a
merchant at Portland, Or., since the year 1891; that in the year 1897
he went to China upon a business trip, and that upon his return to
the port of Portland, in July, 1898, he applied for readmission, and