

the laws of Mexico were proved by the defendant in the circuit court, who stopped a little short of proving all the laws of Mexico in relation to the matter in hand; omitting to prove, among other things, article 194 of the "Act for the regulation, construction, maintenance and operation of railroads," which was proved in the Evey Case, to wit: "Companies [railway] are liable for all faults or accidents which occur through tardiness, negligence, imprudence or want of capacity of their employés." Act Dec. 15, 1881. We take it that the failure to prove this last-mentioned article in the court below cannot be fatal to the right to recover, because, in the absence of proof, it is to be presumed that, in the matter of the liability of an employer for his negligence resulting in injuries to an employé, the law of Mexico is the same as the law of Texas, in both of which the civil law originally prevailed. See Phil. Ev. (Cowen & Hill's and Edwards' notes) p. 429 et seq., and adjudged cases there cited; 1 Rice, Ev. p. 65; Whart. Ev. § 1292. Indeed, there is good authority for holding that, as the state of Texas recently constituted a part of the republic of Mexico, the courts in the state of Texas, in proper cases, will take judicial notice of the laws common to both prior to the separation. *Malpica v. McKown*, 1 La. 248; *Berluchaux v. Berluchaux*, 7 La. 539. Further than this, it is to be noticed that, under the laws of Mexico as proved herein, it is clear that a civil action may be brought to recover damages resulting from negligence. *Evey v. Railway Co.*, supra, was fully argued, well considered, and the propositions therein declared on the present reconsideration meet our full approval. The judgment of the circuit court is affirmed.

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MORSE et al. v. BAY STATE GAS CO. OF DELAWARE.

(Circuit Court, D. Delaware. June 4, 1897.)

CORPORATIONS—INCOME BONDS—NATURE OF CONTRACT—EQUITABLE JURISDICTION.

Income bonds issued by a corporation, the interest on which is payable from the net income of the corporation for the preceding year, no interest to be paid unless such income is earned, but which make the interest the first lien thereon, are not mere promises to pay, for the breach of which an action at law is the only remedy, but necessarily imply an obligation on the part of the corporation to act in good faith in the production, protection, and application of net earnings, which is fiduciary in its nature, and therefore of equitable cognizance; and, where there has been default in the payment of interest, holders of such bonds may maintain a suit in equity against the corporation for a disclosure and accounting in regard to the income earned, on allegations that it has been misappropriated.

This is a suit in equity by Godfrey Morse and others, as bondholders, against the Bay State Gas Company of Delaware. On demurrer to bill.

J. H. Hoffecker, Jr., and B. L. M. Tower, for complainants.  
George Gray and H. H. Ward, for defendant.

DALLAS, Circuit Judge. This suit is brought by some of the holders of income bonds of the corporation defendant on behalf of them-

selves and all other holders of like bonds. In and by these bonds it was provided that the interest should be paid out of net earnings, and that if, in any year, there should be no net earnings, no interest should be paid. They also provided that "such net earnings are to be only such part of the income of said company as would be applicable to the payment of dividends on its capital stock, and they shall in all events be reserved and applied exclusively to the payment of said interest before and in preference to any payment on account of any other obligation of the said company disposing of the said net income, the intention of these presents being to make the payment of said interest a first charge or lien upon the said net earnings to the extent aforesaid." No interest has been paid since May 1, 1893, and the bill alleges that the successive defaults which thereafter occurred were occasioned by certain dispositions of the corporation's assets, which are charged to have been misappropriated, and by certain things done by it, which are charged to have been done in fraud of the bondholders' rights. It is not necessary to pass upon any question concerning the interests of any person or persons who are not parties to this proceeding, but as against the defendant itself the plaintiffs have presented a case which I think entitles them to discovery by answer and through an accounting in equity, and their title to any other or further relief need not now be considered. As regards the corporation which issued these bonds, their manifest meaning is conclusive as to their effect. The undertaking not to make any payment of any other obligation disposing of net income until payment of the interest on the bonds should first have been made, and the expression of intent "to make the payment of said interest a first charge or lien," would be nugatory and delusive if, as defendant contends, the only remedy for any contravention of this provision were an action at law, inasmuch as an action for the breach of a naked promise to pay would be quite as efficacious. Moreover, not only was it provided that the payment of the bond interest should be a first charge or lien upon net earnings, but also that said interest should not be payable except out of net earnings. Surely, then, the holders of these bonds are entitled to know whether there have been net earnings, and, if there have not been, whether their absence is attributable to a failure on the part of the defendant to discharge any duty which it owed to the plaintiffs. But, again, it is contended that no duty was assumed with which a court of equity is competent to deal; that what is set up amounts to but a breach of contract. I cannot assent to this. Those who took these bonds did not, as has been pointed out, accept mere promises to pay. They, of course, relied, and had a right to rely, upon the fidelity of the corporation for the production, protection, and application of net earnings, and by its necessarily implied undertaking to exercise good faith in this regard the corporation assumed an obligation which was fiduciary in its nature, and which, therefore, is of equitable cognizance. My views upon the point which was mainly pressed upon the argument have been briefly, but, I think, sufficiently, indicated. The several additional objections urged against the bill have also been considered, but none of them can be sustained. The defendant's demurrer to the bill of complaint is overruled.

**WEIR et al. v. BAY STATE GAS CO. OF DELAWARE et al.**

(Circuit Court, D. Delaware. November 9, 1898.)

No. 200.

**1. CORPORATIONS—SUITS BY STOCKHOLDERS—NECESSITY OF DEMAND ON CORPORATION.**

It is not requisite that demand on a corporation or its officers to bring suit should be shown to entitle stockholders to maintain the suit, where it is manifest from the allegations of the bill that such demand would have been unavailing, as where the ground for the relief sought is the alleged misconduct of such officers in the management of the corporation.

**2. EQUITY—PLEADING—MULTIFARIOUSNESS.**

The joinder of several grounds of complaint and of several prayers for relief in a single bill is not in all cases inadmissible, and the question is one which calls for the exercise of the discretion of the court in each case where it arises, regard being had to the convenience and substantial rights of the parties. Where the several matters alleged relate to the same general subject of litigation, and may without injustice or inconvenience be disposed of in a single suit, their separation into independent suits is not required.

**3. CORPORATIONS—SUITS BY STOCKHOLDERS—RIGHT TO DISCLOSURE BY OFFICERS.**

In suit by stockholders against the corporation and its officers, allegations of fraud against the defendant officers need not be as specific as would be necessary if they were strangers to the complainants, to require that defendants shall answer and make disclosure as to their management of the corporation, which it is alleged they have refused to do on demand, as complainants are entitled to such disclosure as a matter of right, growing out of the relations of the parties. Nor will their right, if it exists, to compel the production of the books and papers of the corporation by mandamus, afford an adequate remedy, which will preclude them from seeking the fuller information and relief afforded in equity.

This is a suit in equity by James B. Weir and James B. Weir, Jr., as stockholders, against the Bay State Gas Company of Delaware, John Edward Addicks, John Bateman, J. Frank Allee, Newall Ball, and Caleb R. Layton. On demurrer to bill.

Anthony Higgins and John G. Johnson, for complainants.

George Gray and H. H. Ward, for defendants.

**DALLAS**, Circuit Judge. This is a suit by two shareholders in a corporation, against the corporation itself and its president and such of its directors as are known to the complainants. Rule 94 has been complied with. The object of that rule is to prevent suits of this character from being collusively brought to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance. It introduced no new principle. It had long been settled that to enable a stockholder in a corporation to maintain a suit in equity in his own name, in which, ordinarily, the corporation itself should be complainant, it must appear that proper effort had been made to procure redress or action by the corporation or its managing body. But no such effort need be made where it is manifest that it would be fruitless, as, in the case made by this bill, it obviously would have been. *Hawes v. Oakland*, 104 U. S. 460.

The bill is not multifarious. It does not improperly include dis-