

value must govern, and that the appraisers could not go below it. If the invoice value was the lowest value at which the goods could be appraised in deciding whether they were liable to duty or not, it is difficult to see why the invoice value is not to be held to be the lowest value at which the merchandise can be appraised, in determining whether the duty should be six cents or three cents; the rate of duty per pound depending on the value of the merchandise per pound.

It is objected that in the case of *Kimball v. The Collector* the duty was *ad valorem*, and in the case under consideration specific. But the amount of the specific duty depended on the value of the goods, just as, in the case of *Kimball v. The Collector*, it depended on the value of the goods whether the duty should be 24 per cent. *ad valorem* or nothing. Further, the act of March 1, 1823, § 23, (3 St. at Large, 737,) "that when any goods, wares or merchandise shall be admitted to an entry upon invoice, the collector of the port in which the same are entered shall certify the same under his official seal, and no other evidence of the value of such goods, wares or merchandise shall be admitted on the part of the owner or owners thereof in any court of the United States, except in corroboration of such entry," confirms the opinion of the court that judgment should be for the defendant on all the grounds of protest.

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**EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES  
v. CHARLES G. PATTERSON and others.**

(*Circuit Court, D. Massachusetts* February 7, 1880.)

**BILL IN EQUITY—INFANTS.**—Infants are necessary parties to a bill in equity to set aside a policy of insurance, when they have a contingent interest in such policy.

**SAME—MULTIFARIOUSNESS.**—The joinder of a prayer in such bill to restrain an action at law for the recovery of back premiums already paid does not render the bill multifarious.

SAME—DEMURRER ORE TENUS—OATH OF INFANTS TO ANSWER.—A demurrer *ore tenus* must be co-extensive with the bill, and will not prevail where the demurrer is taken upon the ground that the bill prays for an answer under oath by infant defendants.

NELSON, J. The infant defendants, Kate Kirby Patterson and Edwin Crosswell Patterson, by their guardian *ad litem*, demur to the plaintiff's bill, and assign as causes of demurrer: *First*, that they have no interest in the matters complained of in the bill; and, *second*, multifariousness. The plaintiff is a New York corporation, and the policy of insurance was issued and is payable there. The insurance money, by the terms of the policy, is payable to the children at the decease of Charles G. Patterson, the father, if Fannie E. Patterson, the mother, is not then living. This clearly gives the children a contingent interest in the policy, and they are, therefore, proper and necessary parties to a bill in equity to set aside the policy for any cause. *Eadie v. Slimmon*, 26 N. Y. 9; *Barry v. Equit. L. Ass. Soc.* 59 N. Y. 587; *Knickerbocker Ins. Co. v. Weitz*, 99 Mass. 157.

The joining in the bill a prayer for an injunction to restrain Charles G. Patterson, one of the defendants, from further prosecuting a suit at law in this court, to recover back the premiums already paid, is not such a distinct and independent matter as to render the bill multifarious.

The guardian *ad litem* assigns another cause of demurrer *ore tenus*, that the bill prays for an answer, under oath, by the infant defendants. There are two reasons why this demurrer cannot prevail. The first is that a demurrer *ore tenus* must be co-extensive with the demurrer upon the record. 1 Dan. Ch. Prac. 589; Story's Eq. Plead. § 464. The demurrer on the record here is to the whole bill, while the demurrer *ore tenus* is to the prayer only. The second reason is that an infant's answer is by his guardian, and should be upon the oath of the guardian, though he is required to swear only to his belief in the truth of the infant's defence. 1 Dan. Ch. Prac. 753; Story's Eq. Plead. § 871.

The entry must be: Demurrer overruled.

## FARWELL v. BROWN.

(Circuit Court, W. D. Wisconsin. February 13, 1880.)

**ATTACHMENT—PREFERENCE OF CREDITORS.**—The preference of a *bona fide* creditor does not authorize the issuing of an attachment upon the ground that the defendant has disposed of his property with the intent of defrauding his creditors.

BUNN, J. This case comes up on a traverse of the plaintiff's affidavit, upon which an attachment was issued.

The affidavit states that deponent has good reason to believe that the said defendant has assigned, conveyed, disposed of or cancelled his property with intent to defraud his creditors; and that said defendant is about to abscond from the state of Wisconsin, to the injury of his creditors. There was no proof offered under the charge of absconding from the state, and the sole issue is whether the defendant had conveyed or disposed of his property with intent to defraud his creditors.

This is clearly the issue, and not simply whether the deponent, at the time of the making of the affidavit, had reason to believe the defendant had fraudulently conveyed or disposed of his property with such intent. The deponent's reason to believe was a material fact for the purpose of suing out the writ, but counts for nothing when the facts constituting the ground for sustaining the attachment are denied. Here the parties come to closer quarters, and use facts, instead of reasons for belief, for their weapons.

The defendant had in fact conveyed and disposed of the greater part of his property, consisting of a stock of goods, and some notes and store accounts, to his brother, P. E. Brown, and the issue to be tried is whether the sale was made with the intent to defraud the defendant's creditors. If it was, the attachment must be sustained, otherwise not.

The defendant, previous to August 12, 1879, had, since the fall of 1872, been a merchant at Belmont, Wisconsin. In July, 1878, his health failing, he sent for his brother, P. E. Brown, to come and take charge of the store and carry on the business for him. Defendant remained sick in Chicago some seven weeks, and after coming home, not getting any better,