

the orator's counsel that jurisdiction is given if the trade-mark is used by the orator in foreign commerce, or upon goods intended to be transported to a foreign country. But the authority of congress over this subject arises from the power to regulate commerce, and does not extend to the protection of trade-marks within a state. *Trade-mark Cases*, 100 U. S. 82. The orator may have a valid trade-mark, and an exclusive right to its use in New York; but, if so, his rights in that respect do not rest upon the laws of the United States. The registration under the statute only confers a right to it in foreign commerce, and a claim for infringement, or to be protected against infringement, cannot arise under the constitution or laws of the United States unless the infringement is upon the right to use it in foreign commerce, which can only be by using the trade-mark without right in such commerce. The jurisdiction is not conferred at all by express words of the statute; but only by providing a mode of acquiring a right, a suit for the invasion of which would arise under the laws of the United States within the act of 1875. The clause quoted from is restrictive of that jurisdiction. The defendants do not infringe upon any right resting upon the laws of the United States unless they use the trade-mark in foreign commerce, and jurisdiction of a suit for such infringement is not left in the courts of the United States unless such infringement consists in using the trade-mark by the defendants upon goods intended to be transported to a foreign country. The bill falls short of alleging such use; and this court appears to be without jurisdiction to restrain the use which is alleged.

Motion for preliminary injunction dismissed.

WHITTEMORE v. AMOSKEAG NAT. BANK and others.

(Circuit Court, D. New Hampshire. December 3, 1885.)

CORPORATION—ACTION BY STOCKHOLDERS—COLLUSION—EQUITY RULE vs.

Bill in action by stockholder against a national bank *held* demurrable, because it contained no allegation that plaintiff was a shareholder at the time of the transaction complained of, or that his share had since devolved on him by operation of law, and that the suit was not a collusive one to confer jurisdiction on the circuit court, and because plaintiff failed to allege any efforts made to secure such action as he desired on the part of the officers of the corporation, and the cause of his failure to obtain such action as required by equity rule 94.

In Equity.

H. G. Wood, for complainant.

Livermore & Fish, for respondents.

COLT, J. There being no allegation in this bill that the plaintiff was a shareholder at the time of the transaction of which he com-

plains, or that his share has devolved on him since by operation of law, and that the suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance, and the plaintiff failing to set forth in his bill any efforts made to secure such action as he desires on the part of the managing directors or trustees, and the causes of his failure to obtain such action, as prescribed by equity rule 94 of the supreme court, we think it clear that the demurrer to the bill must be sustained. We fail to see the force of the plaintiff's objection that rule 94 does not apply to this case, either by reason of the character of the allegations contained in his bill, or by reason of the fact that, as he contends, the rule does not apply to a stockholder of a national bank in consequence of the language contained in section 5139 of the Revised Statutes. Rule 94 was adopted by the supreme court after careful consideration of the whole subject to which it relates. It prescribes, in a certain class of cases, a mode of procedure, and it makes no exception to the class of cases which are governed by it. With the rule before us, we find no valid ground upon which to sustain the plaintiff's position. Demurrer sustained.

CHICAGO & P. R. Co. and others *v.* THIRD NAT. BANK OF CHICAGO.

(*Circuit Court, N. D. Illinois.* February 15, 1886.)

RAILROAD — CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY — LIABILITY ON JUDGMENT AGAINST CHICAGO & PACIFIC RAILROAD COMPANY.

Judgment obtained by the Third National Bank of Chicago *held* a lien on the Chicago & Pacific Railroad, leased to the Chicago, Milwaukee & St. Paul Railway Company, for which, under the terms of its lease, it was liable, and a decree passed, requiring it to pay into court, within 30 days, a sufficient sum to satisfy the demand of the bank.

In Equity.

Edwin Walker, for the railroad company.

Lyman & Jackson and *John H. Thompson*, for defendant.

GRESHAM, J. The Chicago & Pacific Railroad Company was organized in 1865, to build a railroad from Chicago to the Mississippi river. In the prosecution of its enterprise the company contracted debts amounting to over \$2,000,000. To raise money to pay this indebtedness, and to complete and equip its road, the company, on the first day of October, 1872, executed a trust deed or mortgage, embracing its property of every character and description, to secure an issue of \$3,000,000 bonds, \$2,000,000 of which were sold or delivered to creditors as collateral security. Early in 1876, the company had built its road from Chicago to Byron, a distance of 89 miles. Suit