

and 1879, owing to a feeling of insecurity on the part of depositors towards savings banks, it was customary for the banks to raise money by assignment of their securities or otherwise to meet demands. It is shown that Kimball purchased mortgages from other savings banks in Massachusetts. The fact, therefore, that the Reading Savings Bank wanted to dispose of some securities to raise money was not exceptional in its character. There was nothing in it unusual, or calculated to excite surprise or to put a person upon his guard. Nor, upon the evidence, was there anything unusual, or calculated to arouse the suspicion of a person of Kimball's banking experience, in permitting the treasurer of a savings bank to assign securities. A strong fact going to prove Kimball's good faith is that he paid full face value, including interest, for these mortgages. There is no evidence to show that Kimball had any such relations with Sidney P. Pratt, the son of the treasurer, and engaged with him in defrauding the bank, as go to prove any knowledge on his part of anything irregular. I have carefully examined the transactions with which the son was connected, and which it is claimed are calculated to throw suspicion, at least, upon Kimball, and, in my opinion, the facts do not warrant any such inference. I have no reason to doubt Kimball's statement that he never saw Sidney P. Pratt but once to recognize him, and never had any conversation with him. The plaintiffs' charge of fraud or notice is not sustained by proof.

Another ground relied upon in this case is that the certificate received by Kimball was not a copy of the record of the bank with its fraudulent interpolation, but was a forgery of such record. The copy received by Kimball has the word "assign" placed before "discharge," while the fraudulent record places it after. The copy Kimball produces is the same as the copy found in Thompson's diary, (see *Holden v. Phelps*, 141 Mass. 456, 5 N. E. Rep. 815,) which was made by Thompson at least several months before the first purchase by Kimball. It also appears that the body of Kimball's copy is probably not in the handwriting of N. P. Pratt, but of his son, Sidney. As to the signature of this certificate, another son of Pratt testifies that he does not think his father wrote it; and Solon Bancroft, one of the receivers of the bank, testifies that he is familiar with Pratt's writing, and that he is quite confident it was not written by him.

By this means the plaintiffs undertake to establish that Kimball's certificate was not sent to him by N. P. Pratt, the treasurer and secretary, but that it came from Thompson, and was a forgery. Kimball swears that he asked Pratt if he had authority to assign mortgages; that he said he had, and would furnish a copy of the vote; and that, immediately after, he sent him the certificate, which he produces, by mail. This evidence stands uncontradicted. I think the defendant has fairly made out that the certificate, which is, in substance, a copy of the record of the bank, was received by Kimball from N. P. Pratt, secretary and treasurer, in the course of negotiating the sale of the first mortgages purchased, and it follows that, whether forged or not, it binds the bank as against an innocent party acting in good faith and without notice.

The point is taken by the plaintiffs that the receipt given by Kimball or the Appleton Bank shows, as to the securities it covers, that the transaction was a pledge, and not a sale. This question has already been carefully considered in *Whiting v. Wellington* and *Com. v. Reading Sav. Bank*. In the conclusion there reached, which is adverse to the plaintiffs' contention, I concur. There is no force in the objection that these purchases were on account of the Appleton National Bank, and that, therefore, no title passed because national banks are prohibited from taking mortgages. The evidence is far from supporting the proposition that these purchases were made on account of the Appleton Bank; but, even if they were, it could not avail these plaintiffs. *National Bank v. Matthews*, 98 U. S. 621; *National Bank v. Whitney*, 103 U. S. 99; *Fortier v. National Bank*, 112 U. S. 439, 5 Sup. Ct. Rep. 234; *Reynolds v. National Bank*, 112 U. S. 405, 5 Sup. Ct. Rep. 213.

I find nothing to take this case out from the decisions in *Whiting v. Wellington*, *Com. v. Reading Sav. Bank*, and *Holden v. Phelps*, and therefore the bill should be dismissed, with costs.

TUCK v. OLDS and others.

(Circuit Court, W. D. Michigan, S. D. October Term, 1886.)

1. COSTS—WITNESS MAKING EXAMINATION OF DOCK.

A fee to witness for his services in making a preliminary examination of the *locus in quo*, a certain dock, the exact location of which was in question, cannot be allowed to be taxed as costs, costs being the creature of statute, and the statute not authorizing such an allowance; and it is immaterial that the survey was made in order that intelligent testimony might be given upon the question of location.

2. SAME—SOLICITOR'S FEE FOR TAKING DEPOSITIONS.

Rev. St. U. S. § 824, allowing an attorney's or solicitor's fee of \$2.50 for each deposition taken and admitted in evidence in a cause, does not apply to depositions taken before any of the regular examining officers of the court, in the ordinary way of taking depositions, or before some person agreed on by the parties to act as examiner, but applies only to depositions taken *de bene esse*, and in such other cases, not within the scope of the ordinary method of taking testimony in causes pending in the federal courts, as may arise.

3. SAME—WITNESS FEE TO PARTY TO ACTION.

A witness fee to a party to the action is taxable in the federal court as costs, provided the party causes it to appear by his affidavit, annexed to his bill of costs, that his attendance was solely for the purpose of giving his evidence in the action, and not to assist in its management. Although these facts do not appear by the affidavit in a cause, yet, where the omission is not excepted to, the fee will be allowed as already taxed, upon the party filing an affidavit stating the facts. No allowance of traveling fees can be made where the party does not appeal from the disallowance thereof by the clerk.

In Equity. On motion for retaxation of costs.

Taggart, Wolcott & Ganson, for complainant.

Dart & Call and G. A. Wolf, for defendants.