

the land, then certainly he cannot complain. So, also, it is not shown that Tobin knew by whom the taxes were paid.

The burden of proving the facts upon which the plea of estoppel is based was upon complainant, and he has not seen fit to offer any testimony whatever, but rests his case simply upon proof of the issuance of a patent, and payment of the taxes. To sustain the plea of estoppel, evidence in support of the alleged facts should have been given, if any such exists. None is found in the record, and therefore there is no foundation upon which an argument can be based in support of the plea of estoppel.

The case is simply reduced to this: that, in 1861, the defendant took a conveyance to the land from John M. Stockdale and wife, under what then seemed to be a good title, and has since used and occupied the premises for the only purpose for which the same are fitted, and has exercised such acts of ownership over the same, that all people living in the neighborhood have known that he claimed the lands, and occupied the same as his own.

In 1863 the complainant procured a patent for the lands from the United States, and has paid taxes thereon down to the year 1882; and in August, 1883, he filed the present bill, which, in effect, asks that the defendant be deprived of the possession of the lands, after he has used and occupied the same openly as his own for a period of 22 years, claiming title under public acts and deeds of conveyance that were a part of the public records before the complainant procured his patent to the land.

The defendant, among other matters, pleads the lapse of time and adverse possession as a defense; the evidence sustains the plea; and the decree, therefore, ordered at the first hearing, must be upheld, and it is so ordered.

BREWER, J. I concur in the above.

MERRILL v. SHEA.

Circuit Court, N. D. Iowa. January 24, 1887.

SHIRAS, J. This case is governed by the opinion in *Merrill v. Tobin*, ante, 738.

JOHN A. ROEBLING SONS' CO. *v.* FIRST NAT. BANK OF RICHMOND, VA.,
and others.

(District Court, D. West Virginia. January Term, 1887.)

1. INJUNCTION—TRESPASS BY CORPORATION—IRREPARABLE MISCHIEF.

A court of equity will not interpose by injunction to prevent a corporation, that is guilty of a trespass, from a repetition of the same; it must be shown that there are sundry persons controverting the same right, each standing on his own ground; and that their acts work irreparable mischief.

2. SAME—PLAINTIFF NOT STOCKHOLDER.

To entitle a party to relief by injunction against the illegal or fraudulent proceedings of corporate officers, the party seeking relief must be a stockholder of the corporation.

3. BANKS AND BANKING—NATIONAL BANK—POWER TO CUT TIMBER TO COLLECT DEBT SECURED ON LAND.

A national bank that has loaned money on timber land may, to protect itself and collect the debt, purchase the land at foreclosure sale, and cut and sell the timber.

In Equity.

Mr. Quarrier, for complainant.

Brown & Ferguson, for defendants.

JACKSON, J. The complainant files its bill against the defendants, and prays for an injunction upon two grounds: *First*, that the defendants are trespassers upon complainant's property, committing daily acts of trespass, whereby these acts become a continuous trespass; *second*, that one of the defendants is a national bank, organized under the national banking laws, which restrain and inhibit it from doing any other business than a legitimate banking business.

As to the first ground; the case made by the bill shows that the New River Coke Company, a corporation doing business in Fayette county, West Virginia, is the owner of a tract of land in fee, on New river; and that it "made, executed, and delivered" to the complainant a lease for a portion of the tract "bounded between the Chesapeake & Ohio Railroad on the one side, and the center of New river on the other side;" that, notwithstanding the fact that said company is seized in fee of this tract of land, the defendants are erecting a wire tramway across these lands without its consent, for the purpose of transporting timber over such tramway; that such acts upon the part of the defendants are trespasses; and that the repetition of them daily, is in law a continuous trespass, and that for this reason the defendants should be restrained from building and using the tramway over the lands of complainant. The defendants appear and oppose the granting of the injunction, and file their answer, to be used as an affidavit upon this motion, denying that the complainant has legal right to the possession of the land, and in it, setting up other reasons, supported by affidavits of other persons, why the injunction should be refused. Under the view we take of the question raised, it is only necessary at this time to consider the case made by the bill. It must be conceded that the case made by the bill, presents the question whether a