

of the officers of the bank to believe that the defendant Sowles was insolvent, and that the mortgages were made with a view to give a preference to the bank, and as to whether the petition in insolvency was filed to be proceeded with when it was lodged with the judge of the court of insolvency.

The evidence claimed to be newly discovered as to the first point appears to be so far merely cumulative, and its sources were so well known to the defendants or their solicitors, that there is no ground apparent for opening the case on that subject.

At first it seemed that the second point would be governed by the record, and that parol evidence would not be admissible to affect it in any way. But the period of four months next before the filing of a petition within which conveyances may be avoided is a sort of limitation, and it appears to be well settled that the time of commencement of judicial proceedings to avoid a statute bar may be shown by parol. *Day v. Lamb*, 7 Vt. 426; *Gardner v. Webber*, 17 Pick. 407; 2 Greenl. Ev. § 431. Therefore, this evidence may be admissible, and quite material. It appears to be in fact newly discovered. Its materiality was not so direct and apparent that the failure to discover and produce it appears to amount to such laches that the defendants ought to be deprived of the opportunity to produce it now, upon some terms. The question of terms is reserved.

Proceedings upon the decree entered are stayed, and leave is granted to the defendants to take and file testimony as to the transaction of filing the petition of insolvency, at any time before December 1st, and the plaintiff has leave to file testimony in answer thereto at any time before December 17th, on such terms as may be hereafter fixed.

WITTERS, Receiver, *v.* SOWLES and others, Assignees.

(Circuit Court, D. Vermont. November 11, 1887.)

JUDGMENT—STAY OF—NEWLY-DISCOVERED EVIDENCE.

A decree will be stayed for the taking and filing of newly-discovered testimony which is material, and which could not have been produced on the first hearing.

In Equity.

For statement of facts of this case, see *Witters v. Sowles*, *ante*, 758.

Chester W. Witters, for plaintiff.

Willard Farrington and *Henry A. Burt*, for defendants, Assignees.

WHEELER, J. This cause has now been heard on a motion by the defendants to take new testimony with respect to the reasonable cause of the officers of the bank to believe the defendant Sowles to be insolvent, and that the transfer of the notes and securities in question was made

with a view to give a preference, with respect to the filing of the petition in insolvency, and with respect to what the defendant Sowles did with the notes and securities when he discharged the debts to which they were applied from the books of the bank.

The motion as to the testimony on the first point is denied, and as to that on the second point granted, for the reasons stated in respect to the motion in the other case between the same parties heard with this. The testimony of Albert Sowles as to the other point appears to be in fact newly discovered, and to have been so far kept by him from the knowledge of the other defendants and their counsel that they ought not to be precluded from producing it now upon some terms. The question of terms is wholly reserved.

Leave is granted to the defendants to take and file testimony as to the transaction of filing the petition in insolvency, and to take the testimony of Albert Sowles as to what he did with the notes and securities applied to the debts discharged from the books of the bank on January 25, 1884, at any time before December 1st, and the plaintiff has leave to take and file testimony in answer thereto at any time before December 17th, on such terms as may be hereafter fixed.

WITTERS v. SOWLES and Wife.

(Circuit Court, D. Vermont. November 1, 1887.)

1. BANKS AND BANKING—NATIONAL BANKS—LIABILITY OF SHAREHOLDERS—MARRIED WOMEN.

Rev. St. U. S. § 5151, provides that "the shareholders of every national banking association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such association, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares." *Held*, that this section includes a married woman who holds stock in a national bank, and her separate property can be charged to satisfy an assessment levied upon the shareholders on the insolvency of the bank.

2. SAME.

And the liability of the married woman to respond to such assessment being personal under this section, and the amount sought to be recovered being a sum certain, the remedy to enforce the assessment against the married woman, and to charge her separate property, is an action at law, and not a bill in equity.

3. SAME.

The contracts of a bank are not contracts of the individual stockholders; and where an assessment was made upon the shareholders of a national bank to satisfy a contractual liability, a married woman who held stock in such bank could claim no immunity from the assessment on the ground that she had no legal capacity to contract.

In Equity.

See case between same parties, *ante*, 130.

Chester W. Witters, for plaintiff.

Edward A. Sowles, for defendants.