

*UNITED STATES, Appellants, v. The SALINE BANK OF VIRGINIA, JOHN WEBSTER and others, Appellees.

Discovery.—Excuse from making discovery.

The plaintiffs, as creditors of an unincorporated bank, filed a bill against the cashier, and a number of persons, stockholders of the bank, for a discovery and relief; who, in reply to the bill, stated, that their answers to the bill would subject them to penalties, under the laws of Virginia, prohibiting unincorporated banks: *Held*, that the defendants were not bound to make any discovery, which would expose them to penalties.¹ p. 104.

APPEAL from the Circuit Court of West Virginia. This case came before the court, on an appeal by the United States, from the decree of the district court of the United States for the western district of Virginia; in which court, the district-attorney of the United States, filed a bill against John Webster, cashier, and a number of others, as stockholders of the Virginia Saline Bank, to charge them, in their private capacities, for certain deposits of money made with them, and also to subject their joint funds, &c.

The bill charged, that about the year —, a company was formed by a number of persons, citizens of Virginia, within that district, to carry on the usual and ordinary business of banking. That they established a banking-house; assumed the name and style of the "President, Directors and Company of the Saline Bank of Virginia;" that they issued notes or bills, purporting to be payable out of the joint funds; to make discounts and exchanges, whereby circulation and currency was given to their notes and bills; that in discharge of public dues, \$10,120 of their notes were paid into the treasury of the United States, before the 21st of October 1819; and on that day, \$5831, in said notes, were deposited by an agent of the treasury, with John Webster, cashier of the said association, who demanded payment therefor, after obtaining a certificate of deposit; which payment was refused by Webster, who said he had no funds. At the same time, the agent presented a draft drawn by the treasurer of the United States, for \$4290, being also for their notes received in the treasury, which was the balance of the said sum of \$10,120. This draft was refused also, for want of funds. The bill charged, that Webster possessed funds of the company in specie, and notes of solvent chartered banks, and combined with individuals of the company to refuse payment, by fraudulently secreting these funds. The bill prayed an account of the funds of the company, and also, to subject the cashier and stockholders to a personal decree.

*101] *There were filed, with the bill, the following documents mentioned therein:—

1. "Virginia Saline Bank, October 21st, 1812. William Wham has deposited in this bank, 5831 dollars, in notes of the same, for safe-keeping—to be returned to him, or his order."

J. WEBSTER, Cashier.

¹ s. p. *Stewart v. Drasha*, 4 McLean 563. And see *Atwill v. Ferrett*, 2 Bl. C. C. 40; *Finch v. Rikeman*, Id. 301. Although it be provided by statute, that the answer of a defendant to a bill in equity, shall not be received in evidence against him, on the trial of any indictment for the fraud charged in the bill, yet the defendants

in such bill cannot be compelled to make discovery as to any charge which is indictable at common law, and involves moral turpitude. *Union Bank v. Barker*, 3 Barb. Ch. 358. See *Rose v. Savings Fund*, 6 Phila. 10; *Philadelphia v. Kyser*, 10 Id. 50.

United States v. Saline Bank.

2. "Virginia Saline Bank, 21st October 1819. I certify, that William Wham, cashier of the Bank of Columbia, acting as agent for the treasurer of the United States, this day demanded payment of my receipt of this date, in his favor, for 5831 dollars. That he presented a draft drawn by the treasurer of the United States, No. 9079, dated 18th March 1818, in favor of Jonathan Smith, for 4290 dollars, and demanded payment for the said deposit and the said draft; whereunto I answered, that I was not prepared with funds, and could not pay the said draft, or deposit, at this time."

J. WEBSTER, Cashier.

The above-mentioned draft, drawn by the treasurer, is in these words:—

No. 9079, Reg'd. March 18th, 1818,
for the Register, J. DAWSON.
No. 9079, Dr. 4290.

Treasury of the United States, Washington, March 18, 1818.

Sir:—At sight, pay to Jonathan Smith, Esq., cashier Bank United States, four thousand two hundred and ninety dollars, value received.

T. T. TUCKER,
Trea. U. States.

JOHN WEBSTER, Esq.,
Cashier, Virginia Saline Bank.

To the bill of the United States, the defendants filed the following joint and several plea, with the usual affidavit:—These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the complainants' said bill of complaint contained, to be true, in such manner and form as the same are therein alleged and set forth, for plea thereunto say, that the company which assumed the name and style of the said "President, Directors and Company of the Saline Bank of Virginia," whereof mention is made in the bill of complaint, had not, at the time of the issuing, or of giving currency or circulation to the notes or bills in the said bill of complaint mentioned, or at any time hitherto, any charter incorporating the said company, with authority to deal or trade as a bank, or any charter whatsoever; and these defendants further say, that all the notes and bills issued by the said *company, and to which circulation and currency was given, as in and by the complainants' bill is supposed, were [*102 entitled and offered in payment by the said company, to wit, at the time of the issuing of the said notes and bills, as charged and supposed by the said bill of complaint, to wit, at the western judicial district of Virginia; and these defendants aver, that all the matters and transactions in the said bill of complaint stated, and whereof discovery is sought, relate to the emission of the said bills and notes by the said company, and to the offering the same in payment as aforesaid, all which matters and things these defendants are ready to aver, maintain and prove, as this honorable court may award: and these defendants are advised and insist, that they ought not to be compelled to discover or set forth any matters, whereby they may impeach or accuse themselves of any offence or crime, or be liable by the laws of the commonwealth of Virginia, to penalties and grievous fines; for which cause, these defendants humbly pray the judgment of this honorable court, whether they shall be compelled to make any other or further answer to said bill of complaint, and humbly pray to be hence dismissed, &c.

J. PINDALL, Defendants' Attorney.

United States v. Saline Bank.

The cause was set for argument, on this plea, by consent. The district court sustained the plea, and dismissed the bill. From which decree, the United States appealed to this court.

The record contained the articles of association called for by the bill, with a list of the subscribers, the 4th article whereof is in these words, viz: "No stockholder shall be answerable in his person, or individual property, for any contract or engagement of the said company, or for any losses, deficiencies or defalcations of the capital stock of the said company; but the whole of the said capital stock, together with all the rights and credits, and all the property, both real and personal, belonging to the said company, and nothing more, shall, at all times, be answerable for the legal and equitable demands against the said company." By the articles of association, it appeared, that the subscription of the stock of the company, began on the 14th of August 1814.

The legislature of Virginia had thrice enacted laws on the subject of unincorporated banking companies, in February and in November 1816; and in August 1817. Tate's Digest, 41, 42. The following are the provisions of the laws of Virginia upon this matter:—

1. It shall not be lawful for any association or company, not having a charter incorporating such association or company, with authority to deal or trade as a bank, now formed or in being, or which hereafter may be formed *103] within the limits of *this commonwealth, for the purpose of discounting notes, bills or other securities for the payment of money or other valuable thing, and issuing notes, drafts or bills, whether payable to order or bearer, or any other securities for the payment of money or other valuable thing, in the name, or on account, or for the benefit of, any such association or company, or otherwise for the purpose of dealing, trading or carrying on business as a bank; to commence or continue the discounting of any notes or bills, or other securities, for the payment of money or any other valuable thing, or the issuing of any notes, drafts or bills, or other securities for the payment of money, or other valuable thing, or such dealing, trading or carrying on business as a bank; and every member, officer or agent of any such company or association, that may so commence or continue such discounting or issuing of notes, drafts, bills or other securities, or the dealing, trading or carrying on business as a bank, shall be held or taken to be guilty of a misdemeanor, and upon conviction thereof, on indictment, information or presentment, shall be liable to be fined at the discretion of a jury, in a sum not less than one hundred, nor exceeding five hundred dollars. And if any such company or association, or any president, manager, cashier, or other officer or agent of such company or association, shall pay out, deliver, put in circulation, or issue any note, draft, bill or other security for the payment of money or other valuable thing, purporting to promise, order, request or stipulate the payment of money or other valuable thing, or that money or other valuable thing is payable by, or on behalf of such company or association, or any person or persons, as agent or agents thereof; each member, officer and agent thereof shall be, in like manner, liable to the same penalty.

All contracts that hereafter may be made by individuals for the purpose of forming themselves into any association or company, for discounting and issuing notes and other securities, for the payment of money or other valua-

United States v. Saline Bank.

ble thing, as mentioned in the first section of this act, or dealing, trading or carrying on business as a bank ; shall be, and the same are hereby declared to be utterly null and void.

2. The capital stock of any association or company, trading, discounting paper, or issuing notes, in violation of this act, and all capital stock subscribed to such association or company, shall be held in trust for the benefit of the commonwealth, and it shall be the duty of the attorney-general, whenever he shall be informed of the existence of any such company or association, to institute a suit in the superior court of chancery for the district of Richmond, in behalf of the commonwealth, for the purpose of recovering the capital *stock aforesaid. In such suit, it shall be lawful to make all or any of the members of such company or association [*104 and any officer, agent or manager thereof, parties defendant ; and to call upon and compel them, or either of them, to exhibit all their books and papers, and an account of all such matters and things as may be necessary to enable the court to make a decree in pursuance of the provisions of this act. The members of any such association or company made defendants in such suit, shall be held severally liable to the commonwealth for their respective proportions of the capital stock held in such company or association, at the institution of such suit, or the time of the decree, or by any person or persons, for his, her or their benefit ; and the court shall decree against the defendants, respectively and severally, the amounts that they and each of them may respectively and severally hold as aforesaid, in the capital stock of such company or association, or by any person or persons for his, her or their use or benefit, to be levied of the proper goods and chattels, lands and tenements of such defendants : Provided, however, that no disclosure made by any party defendant to such suit in equity, and no books or papers exhibited by him in answer to the bill, or under the order of the court, shall be used as evidence against him in any motion and prosecution under this law ; and that a recovery in such suit shall be a bar to every motion or prosecution against any defendant to such suit, for the recovery of any penalty, or the infliction of any punishment prescribed by this act. See also, 1 Rand. 71 to 101 inclusive.

The case was submitted to the court without argument, by the *Attorney-General* of the United States ; and by *Webster* and *Doddridge*, for the appellees.

MARSHALL, Ch. J., delivered the opinion of the court.—This is a bill in equity for a discovery and relief. The defendants set up a plea in bar, alleging that the discovery would subject them to penalties, under the statute of Virginia. The court below decided in favor of the validity of the plea, and dismissed the bill. It is apparent, that in every step of the suit, the facts required to be discovered in support of this suit would expose the parties to danger. The rule clearly is, that a party is not bound to make any discovery which would expose him to penalties, and this case falls within it. The decree of the court below is, therefore, affirmed.

Decree affirmed.