

oaths, as required by statute. They are subject to all penalties denounced against fraudulent claims on the United States. Their compensation is derived from small allowances for the several acts they officially perform. They have no salary or general allowance to recompense them for services of a general character. And, in view of the law and the facts of this particular case, we do not feel justified in ordering the commissioner, against his protest, to show the docket he has kept under the direction of the court, and for which he is denied pay. If he were properly paid for it, then the court would hold that its production, as often as called for by proper authority, would be necessary, as the evidence that his charges for keeping it were correct. And if it be made hereafter to appear that for the labor and service imposed on them by any order of the court the commissioners are not allowed such compensation as they are reasonably entitled to, the court, on their request, would feel constrained, by modification of its order, to afford them relief.

Motion denied.

HUGUNIN v. THATCHER.

(Circuit Court, N. D. New York. 1883.)

PRACTICE—NON-RESIDENTS—SECURITY FOR COSTS—TIME WITHIN WHICH DEMAND MUST BE MADE.

The time within which a defendant shall make his demand for security for costs, from a non-resident plaintiff, is not confined to the time before issue is joined, but the defendant may require the security to be filed at any stage of the litigation, provided he is not guilty of laches or bad faith. Sections 3268 and 3278 of N. Y. Code of Procedure adopted by this court.

In Equity.

R. H. Duell, for defendant.

A. H. Walker, for complainant.

COXE, J. The defendant asks for an order compelling the complainant, who is a non-resident, to file security for costs. The application is opposed solely on the ground that it is made too late; the demand for security being served five days after the answer was filed. The provisions of the Revised Statutes of New York relating to security for costs, (now sections 3268–3278 of the Code of Civil Procedure,) are adopted by this court. Rule 4, Cir. Ct.; Rule 64, Dist. Ct.; Conkl. Treat. (5th Ed.) 468; *Lyman Ventilating, etc., Co. v. Southard*, 12 Blatchf. 405.

It will be seen, upon an examination of the sections referred to, that they are entirely silent as to the time when the defendant may require the security to be filed. There is nothing to warrant the construction that he must make the demand before issue joined. He may—the plaintiff being a non-resident—make it at any stage of the

litigation, provided he is not guilty of laches or bad faith. The courts of New York have so decided, and upon such a question their decision should be followed by this court. *Burgess v. Gregory*, 1 Edw. Ch. 449; *Micklethwaite v. Rhodes*, 4 Sandf. Ch. 434; *Northrop v. Wright*, 1 How. Pr. 146; *Robinson v. Sinclair*, 1 Denio, 628; 2 Wait, Pr. 57½; 1 Barb. Ch. Pr. (2d Rev. Ed.) 102.

There should be an order requiring the complainant, within 20 days, to file security in the sum of \$250, and providing for a stay of proceedings in the usual form.

HUGHES v. NORTHERN PAC. RY. Co. and others.

(Circuit Court, D. Oregon. October 29, 1883.)

1. VERIFICATION OF BILL IN EQUITY.

A bill in equity, even for an injunction, need not be verified unless it is intended to be used as evidence on an application for a provisional injunction.

2. JURISDICTION UNDER A LAW OF THE UNITED STATES.

A suit arises under a law of the United States when the controversy involved therein turns upon the existence, effect, or operation of such a law, and therefore a suit by a riparian owner to enjoin the construction of a bridge contiguous and injurious to his property, upon the ground that the defendant is not authorized to build the same by a certain act of congress, as it pretends and claims, arises under said act, and is within the jurisdiction of the proper circuit court.

3. IN WHAT COURTS THE NORTHERN PACIFIC MAY SUE OR BE SUED—CITIZENSHIP OF.

Semble, that the Northern Pacific Railway Company, being created by an act of congress, may sue or be sued in the proper circuit court of the United States in all cases; and, *quære*, of what state, if any, is it a citizen, for the purpose of jurisdiction in such courts?

4. ACT INCORPORATING THE NORTHERN PACIFIC—CONSTRUCTION OF.

The act of July 2, 1864, (13 St. 365,) incorporating the Northern Pacific Railway Company, and the acts amendatory thereof, are a grant by the public to a private corporation, and must therefore be construed most strictly against the latter, so that no authority, right, or privilege can be held to pass thereby unless the same is therein plainly expressed or clearly implied.

5. NORTHERN PACIFIC AUTHORIZED TO BRIDGE A NAVIGABLE WATER ON THE LINE OF ITS ROAD.

The Northern Pacific Railway Company was authorized by said acts "to lay out, locate, construct, furnish, maintain, and enjoy a continuous railway" from Lake Superior to Portland, Oregon, "with all the powers, privileges, and immunities necessary to carry into effect the purpose" of said acts; the same "to be constructed in a substantial and workmanlike manner, with all the necessary draws, * * * bridges, etc., * * * equal in all respects to railways of the first class;" and it is necessary to cross the Willamet river with such road in order to reach Portland from the eastward. *Held*, that the right of the Northern Pacific Railway Company to build and maintain a draw-bridge across said river, or other navigable water on the line of its road to Portland, without causing any unnecessary injury or obstruction to the usefulness thereof, is clearly implied in said acts; but that congress not having prescribed the exact location or particular character of said bridge, the right of the corporation to construct it is subject to the judgment of the proper court as to whether it is being constructed without unnecessary injury to the navigability of such water, upon the complaint of any one specially injured thereby, or likely to be.