

petent evidence; that copies should have been produced. This objection the court overruled. Copies of record are admitted from necessity, because the originals cannot be produced. The originals are the best evidence, and the admission of copies does not exclude the originals when they can be produced. In *Cate v. Nutter*, 24 N. H. 108, it was held that where a copy of a record is admissible in evidence, the record itself is equally admissible. So, in *Jones v. French*, 22 N. H. 64. The papers admitted as evidence were not an extended record; none had been made, but various orders and decrees of the court, and in such case, in proceedings in equity, the original papers and docket entries will be deemed the record. *U. S. Bank v. Benning*, 4 Cranch, C. C. 81.

On consideration the ruling of the court was correct, and the bill in this case should be dismissed.

**BARTLETT and others v. HIS IMPERIAL MAJESTY THE SULTAN OF
TURKEY and others.**

(*Circuit Court, S. D. New York. February 25, 1884.*)

PRACTICE—SERVICE OF PROCESS ON ATTORNEY—SUIT FOR INJUNCTION.

In a suit to enjoin the prosecution of an action at law, if the defendant cannot be found in the district, process may be served upon his attorneys in the legal action.

In Equity.

Goodrich, Deady & Platt, for plaintiffs.

Tracy, Olmstead & Tracy, for American National Bank, for the purposes of this motion only.

WALLACE, J. The theory of this bill is that the complainants, as warehousemen, having been sued by the defendants severally in actions at law, to recover the possession of personal property in the custody of complainants as such warehousemen, are entitled to compel the defendants to interplead and relieve complainants from the burden of the several litigations at law. As part of the relief prayed for, the complainants seek to enjoin the defendants from their proceedings at law. For reasons which it is not now necessary to state, it may be doubtful whether the complainants can maintain their bill. The question now is, however, not whether the bill is good upon demurrer, but whether the complainants are entitled to secure the appearance of the defendants who cannot be served with process, because they cannot be found within the district by service of process upon the attorneys for the defendants in the suits at law in this district. This has long been recognized as good practice when the suit

in equity is brought to enjoin proceedings at law. As the subpoena has already been served upon the defendants' attorneys, an order authorizing such service will be granted upon presenting a sufficient affidavit.

WALLAMET IRON BRIDGE Co. v. HATCH and another.

(Circuit Court, D. Oregon. March 3, 1884.)

1. BILL OF REVIEW.

An application to file a bill of review, without the performance of the decree, ought to be made to the court by petition and on notice to the adverse party, and if it appears that the performance of the decree would destroy the subject of the litigation, it ought to be allowed.

2. SAME—HEARING.

On the hearing of a bill of review the court can only consider the errors of law apparent on the face of the record, and a fact found or determined by the decree is presumed to have been sufficiently proved by the evidence.

3. THE WALLAMET RIVER A NAVIGABLE WATER OF THE UNITED STATES.

The Wallamet river, though wholly within the state of Oregon, by means of its connection with the Columbia river, forms a highway for interstate and foreign commerce, and is therefore a navigable river of the United States, and subject, as such, to the control of congress.

4. NAVIGABLE WATERS IN OREGON ARE COMMON HIGHWAYS.

The act of February 14, 1859, (11 St. 383,) admitting Oregon into the Union, which declares that the navigable waters therein shall be "common highways and forever free" to the citizens of the United States, is not a compact made with or condition imposed upon the state in consideration of its admission into the Union, but is, so far, an absolute and valid regulation, made by congress in pursuance of its power over the navigable waters of the United States, as a means of interstate and foreign commerce, which it might as well have enacted before or after as at the time of such admission.

5. OBSTRUCTION TO "COMMON HIGHWAY."

Congress, by the act of 1859, having declared the Wallamet river "a common highway," the state cannot authorize any one to build a bridge across the same, which, under the circumstances of the case, will needlessly impede or obstruct the navigation thereof.

6. JURISDICTION OF THE UNITED STATES CIRCUIT COURT.

The Wallamet river being declared "a common highway" by congress, the question of what constitutes a needless and therefore unlawful obstruction thereto arises under a law of the United States, and therefore the United States circuit court has jurisdiction to hear and determine a suit involving the same.

7. THE ORDINANCE OF 1787.

Semble, that the clause in the fourth article of the compact in the ordinance of 1787, concerning the navigable waters of the Northwest territory, was not abrogated or superseded by the formation of states therein and their admission into the Union.

Bill of Review.

George H. Williams and Rufus Mallory, for plaintiff.

Walter W. Thayer and John M. Gearin, for defendants.

DEADY, J. This is a bill of review, filed May 27, 1883, and brought to reverse the final decree given in this court on October 22, 1881, in a suit between the parties hereto, commenced by the de-

¹Reversed. See 8 Sup. Ct. Rep. 811.