

NORTHERN R. CO. OF NEW HAMPSHIRE V.
 OGDENSBURG & L. C. R. CO.¹

Circuit Court, D. New Hampshire. April 29, 1884.

PRACTICE—CROSS-BILL IN LIEU OF ANSWER.

Permission given by court for a cross-bill to be filed, by consent, instead of the defendant bringing up the reformation of the contract between the companies by way of answer to the original bill. In the event of success in reforming the contract the plaintiff must pay costs up to this time.

In Equity.

J. H. Benton, Jr., for complainants.

S. Bartlett and Wallace Hackett, for defendants.

LOWELL, J. Both parties being of opinion that it is more regular to file a cross-bill than to bring up the proposed reformation of the ³⁴⁸ contract by way of answer to the original bill in *Ogdensburg & L. C. R. Co. v. Northern R. Co. of N. H.* 5 FED. REP. 880, the plaintiffs in this case are hereby permitted to file their cross-bill, on terms that if they shall succeed in reforming the contract, and thereby prevail in the litigation, they shall take no costs to this time, and shall pay the costs in the original suit up to this time.

¹ See 18 FED. REP. 815, for former opinion on this question and statement of case.