

as a condition of the injunction order which they themselves have obtained, to require that they should not sell or remove the property before the question of forfeiture is determined. It is true that on the law side of the court there might be a sequestration of the property under the statute of Louisiana. But that does not defeat or impair the right of the complainant to an injunction in a case clearly authorizing that writ according to the principles of equity. "The equitable jurisdiction of the circuit courts is the same in every state; it is not ousted by the fact that a local statute gives a peculiar remedy at law." See Brightly, Dig. "Equity," II, vol. 1, p. 283, No. 77, and numerous cases cited.

The complainant cannot enforce the forfeiture in this suit, nor by any suit in equity. To do that he must seek it either in the suit at law which the defendant has instituted or a separate suit at law. He is entitled to an injunction to prevent defendant from selling, disposing of, or encumbering property, or removing it from the jurisdiction of this court, until the right to maintain the forfeiture is determined in a suit at law. To that extent alone the injunction is allowed, the complainant giving a bond with security in the sum of \$10,000. If it should be made to appear by either party that a sale of any of the property is requisite, the court will direct it, and will order the proceeds to be put into the registry of the court, or will allow the defendants to sell upon giving adequate security. The decree is made in this form because the defendants seemed to stand, in the argument, upon their suit at law, but if they shall so elect they will have leave to have the question as to the forfeiture determined in the suit in equity, in which case they must reform their bill so as to state fully the grounds upon which the equitable relief is sought.

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

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

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.

BLAIR v. ST. LOUIS, H. & K. R. Co. and others.¹

(Circuit Court, E. D. Missouri. April 30, 1884.)

1. LEGAL ADVISERS OF RECEIVERS—WHO ARE INCOMPETENT.

Where, during the pendency of foreclosure proceedings against a railroad company, a receiver is appointed, the attorney of the plaintiff should not be authorized to act as the receiver's legal adviser.

2. SAME.

Nor will an attorney be appointed legal adviser of a receiver who is related to him, and has come from abroad and become a member of the bar of the circuit for the purpose of securing the appointment.

3. SAME.

In the absence of any special reason for so doing, the court will not go outside of the bar of the circuit in selecting a legal adviser for a receiver.

4. RECEIVERS—WHEN APPOINTED.

Semble, that where a railroad company has failed to pay interest on its bonds when due, and foreclosure proceedings are commenced against it, a receiver should not be appointed, in the absence of fraud, incompetency, etc., to do what the corporate authorities could do better.

In Equity. Motion by receiver to have order appointing legal advisers rescinded, and to substitute for the attorneys then employed a Chicago attorney, who was already attorney for the bondholders, and the receiver's brother, who had lately come to St. Louis from Wisconsin, and had been admitted to the federal bar of this circuit.

Walter C. Larned, for complainant.

TREAT, J. A bill on the part of the mortgagee was filed in this case for the foreclosure of a mortgage and the appointment of a receiver *pendente lite*. The allegations of the bill were that the managers of the road had practically abandoned the control and conduct of the same, whereby the preservation of the property required a receiver *pendente lite*. A court should not, on mere default of interest on bonds, take possession of a railway and substitute a receiver of its appointment to do what the corporate authorities, more familiar with its interests, could better do. In the absence of fraud, incompetency, etc., the court, pending a proceeding for a foreclosure, under ordinary circumstances, will not take possession through its receiver of the corporate property and substitute its officer in the place of the corporate offi-

¹Reported by Benj. F. Rex, Esq., of the St. Louis bar.