

BARRY *v.* MISSOURI, K. & T. RY. CO.*Circuit Court, S. D. New York.*

1884.

RAILROAD BONDS.

Bill dismissed, because of defect of parties: following *Morgan v. Kansas Pac. Ry. Co.* 21 Blatchf. 134; S. C. 15 FED. REP. 55.

In Equity.

Anderson & Man, for complainant.

Dillon & Swain, for defendant.

WALLACE, J. This case cannot be distinguished from that of *Morgan v. Kansas Pac. Ry. Co.* 21 Blatchf. 134, S. C. 15 FED. REP. 55, and the question whether the trustee for the bondholders, named in the mortgage, is a necessary party to a suit to compel the mortgagor to apply its net earnings to the payment of the bonds, is therefore not an open one in this court. The demurrer is sustained which alleges a defect of parties. There are no merits in the other grounds of demurrer.

Leave is granted to complainant to amend his bill within 30 days, upon payment of costs of the demurrer.

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