

OREGON & TRANSCONTINENTAL CO. v. NORTHERN PAC. R. CO.

*Circuit Court, S. D. New York.*

August 20, 1887.

EQUITY—PLEADING—SUPPLEMENTAL BILL.

Under the liberal practice in the circuit court touching applications, under the fifty-seventh rule of practice in equity, for leave to file supplemental bills, the court will not, on such an application, proceed to try the cause, and to determine questions which may more appropriately be raised by demurrer, but will grant such leave although, upon the facts set forth in the supplemental bill, there may be grave doubts as to the complainant's right to the relief prayed for therein.

In Equity. On motion for leave to file supplemental bill.

*Joseph H. Blair*, for Oregon & Transcontinental Co.

*Henry Stanton*, for Railway Co.

LACOMBE, J. The practice in this court touching applications, under the fifty-seventh rule, for leave to file supplemental bills, has always been liberal to the applicant. Rightly so, because the granting of such leave rests so largely in discretion that an unfavorable decision would practically debar the applicant from vindicating the sufficiency of his pleading, or the equity of his cause of action before the appellate court. This court will not, therefore, on such an application, proceed to try the cause, and to determine questions which may more appropriately be raised by demurrer. While in the case at bar, and upon the facts set forth in the supplemental bill, there may be grave doubts as to the complainant's right to the relief prayed for in such bill, that issue will not be tried on this motion.

Motion for leave to file supplemental bill granted.