

granting the appeal did not sign the citation, accept the bond, nor make the return-day within the rules. The records of this court, however, show the transcript has been filed; and that the appellees, by counsel, have entered a regular appearance; so that, so far as defective citation and return-day are concerned, no injury to appellees has resulted. It is otherwise with regard to the bond. In this respect, the case seems to be very similar, if not identical, with that of *O'Reilly v. Edrington*, 96 U. S. 724, wherein Mr. Chief Justice WAITE, speaking for the court, says:

"None of the objections to this appeal are, in our opinion, well taken, except the one which relates to the approval of the bond. That, we think, must be sustained. The security required upon writs of error and appeals must be taken by the judge or justice. Rev. St. § 1000. He cannot delegate this power to the clerk. Here the approval of the bond was by the clerk alone. The judge has never acted; but, as the omission was undoubtedly caused by the order of the court permitting the clerk to take the bond, the case is a proper one for the application of the rule by which this court sometimes refuses to dismiss appeals or writs of error, except on failure to comply with such terms as may be imposed for the purpose of supplying defects in the proceedings. *Martin v. Hunter's Lessee*, 1 Wheat. 361; *Dayton v. Lash*, 94 U. S. 112."

And we think that the like order may go in this case as was given in *O'Reilly v. Edrington*, *supra*, to-wit: This cause will stand dismissed unless the appellant shall, on or before the first Monday in January next, file with the clerk of this court a bond, with good and sufficient security, conditioned according to law, for the purposes of the appeal; and it is so ordered.

CENTRAL TRUST CO. OF NEW YORK v. MARIETTA & N. G. Ry. Co.,
(**HIAWASSEE Co., Intervener.**)

(*Circuit Court of Appeals, Fifth Circuit. December 7, 1891.*)

1. APPEALABLE ORDER—DECISION ON CLAIM OF INTERVENER.

The decision of a circuit court, on a petition of intervention in a foreclosure suit, sustaining the intervener's claim, is a "final decision," within Act Cong. March 3, 1891, c. 517, § 6, giving the circuit courts of appeals jurisdiction to review final decisions of the circuit courts.

2. FORECLOSURE OF RAILROAD MORTGAGE—CLAIMS OF INTERVENER—CONDITIONAL SALE—ESTOPPEL.

An improvement company, interested in the construction of a railroad, and whose president was a stockholder in the railroad company and largely interested as a contractor in the construction of the railroad, equipped the railroad with rolling stock, and caused the same to be marked with the name of the railroad company; the intent of the improvement company being to enable the railroad company to issue certain bonds, secured by mortgage on its railroad as an equipped railroad, and such bonds were issued and placed through the instrumentality of the president of the improvement company. In a suit by a holder of the bonds to foreclose such mortgage, an assignee of the improvement company intervened, claiming the rolling stock. *Held*, that the improvement company and its assignee were estopped to allege that the transaction in question constituted a gratuitous loan of the rolling stock, or to deny the title of the railway company thereto as against plaintiff.

48 Fed. Rep. 32; reversed.

Appeal from the Circuit Court of the United States for the Northern District of Georgia.

Bill in equity by the Central Trust Company of New York against the Marietta & North Georgia Railway Company, to foreclose a mortgage made by the railroad company. The Hiawassee Company intervened, claiming title to certain rolling stock in the possession of the receiver appointed in the suit. Decree for intervener. Plaintiff appeals. Reversed.

Act Cong. March 3, 1891, c. 517, § 6, provides that the circuit courts of appeals established by the act shall exercise appellate jurisdiction to review any "final decision" in the district court and circuit courts, in all cases except as otherwise provided.

STATEMENT BY PARDEE, J.

On the 17th March, 1891, the Hiawassee Company filed a petition, as an intervention, in the suit of Central Trust Company of New York v. Marietta & North Georgia Railway Company, for the foreclosure of mortgage, pending in the circuit court of the United States for the northern district of Georgia, wherein a receiver had been appointed and put in possession of the railway property. Intervener claimed certain railway equipment, then in possession of J. B. Glover, receiver of the Marietta & North Georgia Railway, as follows: One Brooks locomotive, shop No. 5, railroad No. 13; four Baldwin locomotives, Nos. 11, 12, 14, and 15; two combination mail, baggage, and express cars, Nos. 11 and 12; two first-class passenger-cars, Nos. 13 and 14. This petition was demurred to by Central Trust Company of New York, and thereupon was amended on 28th March, 1891, making the claim as follows:

"The property described and claimed by it was purchased by the North Georgia Improvement Company from original owners. It was placed upon the line of the M. & N. G. R. R. Company by the North Georgia Improvement Company, through the instrumentality of Geo. R. Eager, who was largely interested in both companies, but without any contract of purchase or lease by the M. & N. G. R. R. Company, and nothing has been paid on the same by said railroad company, nor has it any claim of any kind on said property. The right of possession to all of said property is in the Hiawassee Company, and the title to all of said property has vested in it, except the title to engines Nos. 14 and 15. These engines were bought from Burnham, Parry, Williams & Co. All of the purchase money has been paid on the same except six notes dated May 30, '89, for \$818.00 each, due, respectively, 17, 20, 21, 22, 23, and 24 months from date. Upon the payment of these notes the title to said engines also will vest in the Hiawassee Company."

It is to be noted that the intervener, in its amended petition, alleges the title to two of the locomotives, Nos. 14 and 15, is in Burnham, Parry, Williams & Co. The intervention, without being put in issue, having been referred to a special master in chancery, the testimony of George R. Eager and J. B. Glover, receiver, was taken. This testimony, together with exhibits introduced by intervener, shows substantially the following facts: That George R. Eager was the contractor to build the Marietta & North Georgia Railway; that he was also the president and a