

**How. 1.** But, in view of the nature of the objections made to the bond, we are of the opinion that it is not necessary to require another bond to be given. It is made payable to the proper parties, it contains the proper statutory conditions under section 1000 of the Revised Statutes of the United States, and no objection is made to it on the ground that the penalty or the sureties are insufficient to secure the debt, damages, and costs, if the plaintiffs in error fail to prosecute their writ to effect. The sole objections to it seem to be that it was taken and approved by the lower court before a writ of error was sued out, and that it is not signed by both of the plaintiffs in error. Section 1007 evidently contemplates that security shall be taken when the citation issues; and such is the usual and proper practice. It was irregular, therefore, to take, approve, and file a *supersedeas* bond reciting the allowance of a writ of error before any such writ had in fact been allowed. But it was competent for the court to reapprove the bond on the issuance of the citation, and such approval may be inferred or presumed, and we think it ought to be conclusively presumed from the subsequent issuance of the citation and allowance of the writ of error. *Brown v. McConnell*, 124 U. S. 490, 8 Sup. Ct. Rep. 559; *Sage v. Railroad Co.*, 96 U. S. 714.

The objection taken to the bond because it was only signed by one of the plaintiffs in error has much less weight. The statute (section 1000) only requires the court "to take good and sufficient security." That such security has been taken (the bond being signed by two sureties) is not denied. The bond accordingly satisfies the requirements of the statute, though only signed by one of the plaintiffs in error.

The motion to dismiss the writ of error and vacate the *supersedeas* will accordingly be denied, if within 30 days the return on the citation is amended so as to show due service, and leave to amend such return is hereby granted.

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**PULLMAN'S PALACE-CAR CO. v. CENTRAL TRANSP. CO.<sup>1</sup>**

(Circuit Court, E. D. Pennsylvania. December 14, 1891.)

**1. EQUITY—DISCONTINUANCE—CROSS-BILL.**

The complainant in an equity suit will not be allowed to discontinue where an injunction has been granted and the defendant seeks, by a cross-bill consonant with the purpose of the original bill, to take advantage of the testimony in the case and to secure rights which he would otherwise have to secure by an independent action.

**2. SAME—WHEN CROSS-BILL MAY BE FILED.**

A cross-bill may be filed after answer filed, where the complainant is seeking to discontinue, and the object of the cross-bill is to enable the defendant to take an aggressive attitude and settle finally the rights in litigation.

**In Equity.** Motion by complainant for leave to discontinue and by defendant for leave to file a cross-bill. Bill by Pullman's Palace-Car

<sup>1</sup>Reported by Mark Wilks Collet, Esq., of the Philadelphia bar.

Company against the Central Transportation Company to enjoin it from collecting rent under lease, to ascertain compensation due for the use of cars and to terminate relations between parties, and for a preliminary injunction restraining the collection of rent accruing subsequently. Complainant's motion refused. Defendant's granted.

*Wayne MacVeagh, J. H. Barnes, and A. H. Wintersteen*, for complainant, cited as to right to dismiss:

*Chicago & A. R. Co. v. Union Rolling-Mill Co.*, 109 U. S. 702, 3 Sup. Ct. Rep. 594; *Railroad Co. v. Hendee*, 27 Fed. Rep. 678; *American Zylonite Co. v. Celluloid Manuf'g Co.*, 32 Fed. Rep. 809.

*John G. Johnson*, for defendant.

Before *ACHESON*, Circuit Judge, and *BUTLER*, District Judge.

*BUTLER*, District Judge. The bill which the plaintiff asks leave to withdraw, avers (among other things) that the lease therein named is invalid; and furthermore, that (if it is not) the plaintiff is authorized by its eighth section, and the happening of a contingency therein stated, to terminate it, on notice to the defendant; that the contingency has happened, the authority been exercised and notice given. It therefore prays the court to enjoin the defendant against proceeding at law to collect rent under the lease; to assist the plaintiff in making delivery of the leased property, and in ascertaining what compensation should be rendered to the defendant for its previous use; and generally to afford its aid in settling the controversy which has arisen out of the transactions between the parties, and terminating, finally, their relations. The court, acknowledging the plaintiff's right to terminate the lease under the circumstances stated, granted an injunction against proceeding at law to recover rent accruing subsequently to such notice; and declined to interfere with an action, then pending, brought to recover rent previously due, because the question of validity raised, could be interposed and decided on the trial thereof. Subsequently on such trial, and review by the supreme court, the lease was found to be invalid. The plaintiff in the bill now seeks to discontinue proceedings under it, while the defendant endeavors, through the instrumentality of a cross-bill, to avail himself of its use as a means of recovering possession of his property, or its equivalent, and compensation for the plaintiff's enjoyment of it under the lease. We do not think the plaintiff's motion should prevail. The propriety of allowing discontinuances in equity depends upon whether defendants may be prejudiced thereby. A decree, or decretal order, entered is usually a conclusive answer to the application. Here, not only was such an order entered, but it now appears that the proceeding, or a similar independent one commenced by himself is the defendant's only means of enforcing his rights—rights which the bill in a measure concedes. The principal object of the proceeding, originally, was to accomplish the object which the defendant now seeks; and considerable testimony has been taken with a view to this end. The defendant would, therefore, be seriously prejudiced by its discontinuance. Not

only would he lose the benefit of this testimony, but he would also be delayed, and might be compelled to seek the plaintiff in another jurisdiction. The object of the cross-bill is to enable the defendant to assume an aggressive attitude in the proceeding, and to use it as a means of settling and closing up the entire controversy on which it is founded. This object seems proper and commendable; and we do not find anything in the rules governing equity pleading, which forbids its allowance. The decisions in which it has been held that cross-bills come too late after answers have been filed—that they should be presented as soon as practicable, so as to avoid delaying the plaintiff's efforts to obtain a trial,—are not applicable to the circumstances of this case. The plaintiff's motion must therefore be dismissed and the defendant's allowed.

ACHESON, Circuit Judge, concurs.

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SOUTHERN PAC. R. Co. v. STANLEY *et al.*

(Circuit Court, S. D. California. February 8, 1892.)

1. QUIETING TITLE—RAILROAD LAND GRANTS.

The rule that a suit to quiet title can only be maintained upon the legal title does not apply as against a railroad company, with respect to lands granted to it by the government, when it has done everything required to entitle it to the grant, since it is powerless to compel the government to issue a patent therefor.

2. SAME.

It would be inequitable to regard such a company as the legal owner for the purpose of imposing taxes upon it, while denying it the same standing with respect to the enforcement of its rights.

3. SAME—FOLLOWING STATE STATUTES.

Code Civil Proc. Cal. § 738, permitting actions to quiet title to be brought by persons not in possession, is applicable to suits in the federal courts.

4. RAILROAD LAND GRANTS—PASSING OF TITLE.

Under Act Cong. March 8, 1871, granting lands in aid of the Texas Pacific Railroad Company, the full equitable title passed at the time of filing the map of definite location of the road, and, as against such title, no rights could attach between that date and the date of the order withdrawing the land from market.

5. SAME—CLOUD ON TITLE.

A bill to quiet title, alleging that the United States had full title at the time complainant's grant attached, and that defendant claims under a patent issued by the state as for land to which the state was entitled in lieu of certain other grants, shows a cloud upon the title, although it is not alleged that such lands were ever listed to the state; since the state patent creates a presumption that all steps necessary to its issuance have been complied with.

6. SAME—LIMITATIONS—INTEREST OF GOVERNMENT.

In an action to quiet title to railroad grant lands, in respect to which the company has performed all the requisite conditions, and has constantly sought, without success, to obtain a patent, against one claiming under a state patent issued as for lands selected in lieu of other grants, the United States being legally liable to make the company's title good, has such an interest in the suit, although not a party, as will prevent limitation from running against the company's cause of action.

7. SAME—LACHES.

In an action by a railroad company to quiet title to lands granted to it by the United States no laches can be imputed to the company with respect to time passing between the date of the grant and the time of complete performance of the conditions thereof; for, though the title passes as of the date of the grant, it only does so by relation, upon the performance of the conditions, and before performance no such suit could be maintained.