

to. Dealing with the interest of mortgagees in railroad property, we encounter vested rights. They cannot be displaced upon any mere idea of right, or on any refined notions of equity. In managing the property, the court is not the owner, nor can it entertain sentiments of benevolence or humanity in disbursing the funds,—luxuries in which the owner alone can indulge. So much of the petition as prays special priority under the order of 28th February, 1891, is disallowed. The claim comes under the principles laid down in *Fosdick v. Schall*. We have already passed upon several claims of this character in the intervention of the *Pocahontas Coal Co. et al.* in the main cause, (48 Fed. Rep. 188.) Let the claim of the present petitioner be included with those claims to the amount proved, \$902.80, and share the same fate.

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MILLER v. CLARK et al.

(Circuit Court, D. Connecticut. March 12, 1892.)

**BILL OF REVIEW—PAYMENT OF COSTS—REASONABLE DELAY.**

The supreme court dismissed an appeal from the circuit court, with a mandate requiring appellant to pay the costs. Thereafter the appellant, without paying the costs, brought a bill in the circuit court to review its judgment, which was demurred to for want of an allegation that the costs were paid. The court held that this was not a ground of demurrer, but that the proper remedy was to stay proceedings until payment of the costs. No order was asked fixing a time for such payment, and payment was made and accepted by defendant's counsel two months and twelve days thereafter. *Held*, that the delay was not so unreasonable as to debar plaintiff from filing a supplemental bill alleging such payment.

In Equity. Bill of review by Martha A. Miller against Emma J. Clark and others. For opinion on demurrer to the bill, see 47 Fed. Rep. 850. The hearing is now on a motion to strike out a supplemental bill. Overruled.

*John M. Buckingham*, for plaintiff.

*W. B. Stoddard*, for defendants.

SHIPMAN, District Judge. This is a motion to strike from the files the supplemental bill in this case, which alleges the payment of costs, upon the ground that the payment and the supplemental bill were delayed for an unreasonable time. Two other grounds were suggested in the motion, but were not pressed in the argument. In the decision, which was made after the argument of demurrer, and which was filed November 3, 1891, I said that the omission to state the payment of costs in the bill was not a subject of demurrer, for the rule requiring payment of costs was one of procedure, rather than jurisdictional, but could be taken advantage of by a motion to stay proceedings; and also said: "Before a decision upon the other questions contained in the demurrer, proceedings under the bill of review should be stayed until the mandate of the supreme court has been complied with," etc. No order of stay

was asked for, and therefore no time was fixed for the payment of costs. They were paid January 15, 1892, and the supplemental bill was filed on the next day,—a delay of two months and twelve days. Inasmuch as no order was asked or made fixing the time of payment, and as the defendants' counsel accepted the costs, when paid, I cannot say that this delay debars the petitioner in the bill of review from filing her supplemental bill. The decision upon the demurrer was postponed until this payment should be made or excused. Inasmuch as the case was argued some time ago, if the respective counsel have any views in addition to those which were contained in their briefs, I should be glad to receive them in writing.

### SOUTHERN PAC. CO. v. RAUH.

(Circuit Court of Appeals, Ninth Circuit. March 7, 1892.)

#### 1. JURORS—CHALLENGES—EXAMINATION—REVIEW—RECORD.

Under Code Civil Proc. Or. § 187, providing that an opinion already formed by a juror is not alone sufficient to sustain a challenge, but that the court must be satisfied from all the circumstances that the juror cannot try the case impartially, the ruling of the court on the juror's qualifications will not be reviewed unless all of the evidence taken at the examination be presented in the record, although the testimony produced shows the juror to have a fixed opinion on the merits of the cause. *State v. Tom*, 8 Or. 179, followed.

#### 2. SAME—CHALLENGES.

Under Code Civil Proc. Or. § 231, providing that the point of exception to a juror must be particularly stated, it is not sufficient to challenge for cause without stating the particular reasons for such challenge.

#### 3. SAME—REVIEW.

The discretionary finding of the trial judge in passing upon a juror's qualifications will not be reviewed unless it appears to have been exercised arbitrarily.

#### 4. SAME—EXCEPTIONS.

Rejection, by the court, of a challenged juror for insufficient reasons, is no ground for exception when it appears that the remainder of the jury was made up of persons to whom the excepting party made no objection.

#### 5. SAME—REVIEW.

To base error upon the court's ruling that a juror need not answer as to his prejudice against corporations, it must appear that the party making the challenge was thereby prevented from ascertaining whether the juror had such prejudice as would interfere with his conclusions in arriving at a verdict.

#### 6. PERSONAL INJURIES—EVIDENCE AS TO FAMILY.

In an action for personal injuries it appeared that plaintiff had no external hurt except a slight bruise, but that he had been in bed ever since the accident,—a period of several months. Evidence was admitted without objection that he had a wife and home. *Held* proper to admit further evidence that he had two children, of seven and five years respectively, not for the purpose of increasing the damages, but as explaining why the members of his family were not called to testify as to his condition during that time, and as tending to show that he was not shamming illness.

#### 7. SAME—MEDICAL EXPERTS—VERDICT.

In a damage suit for personal injuries, where the evidence points to some internal hurt, manifesting itself in symptoms of hysteria, the medical testimony being conflicting, an instruction that the testimony of defendant's witnesses, who had had experience in similar cases, was entitled to the greater weight, is not necessarily disregarded in a verdict for plaintiff, where the latter had produced other testimony tending to show the serious nature of his injuries.

#### 8. SAME—EXCESSIVE VERDICT.

A verdict for \$10,000 for personal injuries to an adult is not excessive where the testimony of the attending physician, corroborated by that of another medical ex-