west of the Colorado river. Of course, the court cannot now know what the evidence may show in regard to that fact. If established as alleged by the defendants, it may be that it would result that the lands in controversy never vested in the Atlantic & Pacific Company, but did pass to the Southern Pacific Company under the grant to it; for, in the late opinion of the supreme court respecting these grants, (146 U. S. 606, 13 Sup. Ct. Rep. 160,) it is said:

"The question is asked, supposing the Atlantic & Pacific had never located its line west of the Colorado river, would not these lands have passed to the Southern Pacific Company under its grant? Very likely that may be so. The language of the Southern Pacific Company's grant is broad enough to include all land along its line; and, if the grant to the Atlantic & Pacific Company had never taken effect, it may be that there is nothing which would interfere with the passage of the title to the Southern Pacific Company."

In view of the issues raised by the pleadings, and of the facts alleged by complainant and admitted by the defendants, that there are outstanding patents of the government purporting to convey to the defendant company large portions of the disputed premises, and that under and by virtue of those patents, and the grant from congress, the defendant company has, for value received, executed deeds of conveyance and contracts of sale to the individual defendants for a large part of such lands, under which such defendants possess and claim them in good faith, and for value paid therefor, I do not think an injunction should be awarded in advance of a hearing of the cause on the merits. The motion is accordingly denied.

---

## CITY OF DETROIT v. DETROIT CITY RY. CO. et al.

(Circuit Court, E. D. Michigan. March 16, 1893.)

No. 3,320.

1. EQUITY PRACTICE—MOTION TO POSTPONE HEARING—SUIT IN STATE COURT.
   Although federal courts follow the construction of the statutes and constitution adopted by the courts of the state, yet when a suit in equity in a federal court, involving the construction of the statute and constitution of the state, has been set for hearing, the court will not, on motion of a party, postpone the trial to await the decision by the supreme court of the state of a suit pending before it, and said to involve the same question, if it is not clear that the point involved will be determined in the latter suit, and it is uncertain when it will come on for determination.
2. SAME—PROCEEDING IN QUO WARRANTO.
   Nor will the hearing be postponed on the motion of the complainant, a city, although it intends to invoke the aid of the state to test the question involved in a quo warranto proceeding, when doubt exists whether the question can be raised and presented in that way.
3. SAME—DISMISSAL OF BILL WITHOUT PREJUDICE.
   Although a complainant may usually, as of course, have his bill dismissed without prejudice on payment of costs, yet the rule does not apply where the dismissal would prejudice the defendant in some other way than by the mere prospect of future litigation, e. g. if the defendant has gone to the expense of a full preparation for hearing, and has filed a cross bill asking for affirmative relief.
4. SAME—REMOVAL OF CAUSE—PLEADINGS—ANSWER ASKING FOR AFFIRMATIVE RELIEF.
   If the chancery rules of a state court provide that it may give relief to a defendant setting up, by answer, the facts upon which his equity rests,

to the same extent that relief might have been had on a cross bill filed, the defendant need not, upon the removal of a cause to the federal circuit court after such an answer has been filed, reframe his pleading to conform to the federal equity rules, by filing a cross bill setting up the same facts, and praying for relief thereon.

5. SAME—DISMISSAL ON MOTION OF COMPLAINANT.
In 1863 street franchises for a term ending in 1893 were granted to a street-railway company. In 1879 the city council passed an ordinance extending the franchises until 1909. In 1892 the council adopted an ordinance which repealed the ordinance of 1879, and declared all rights claimed thereunder to be void. The city then filed a bill in a state court against the railway company, alleging that the attempted extension of the franchise was unlawful, and praying that the right of the company to use the streets be declared ended after 1893. The railway company answered, alleging the validity of the extension, and praying that the ordinance of 1892 be declared void, and that the city be restrained from interfering with the operation of the railways. It also appeared that the litigation prevented the sale of the company's bonds, and prevented it from making necessary expenditures in the improvement of the streets and of the motive power of its cars. The mortgagee of the railways and franchises, a foreign trust company, was made a party to the suit, and the cause was removed by it to the federal court. Mich. Chancery Rule No. 123 provides that a defendant may claim, by answer, the benefit of a cross bill, and that relief may be given on such answer as on a cross bill. *Held*, that the railway company was entitled to relief in the federal court on its answer as on a cross bill without reframing the pleading; and that, after it had prepared for hearing, a motion by the complainant to dismiss the bill without prejudice must be denied, the effect of the motion being to defeat its prayer for relief.

6. SAME—DISMISSAL—REMOVAL OF CAUSE BY CORESPONDENT.
The railway company is entitled to oppose the complainant's motion to dismiss without prejudice, and to insist on the trial of the cause, although the trust company, its codefendant, by whom the cause was removed, has filed no cross bill, and although the railway company has no right to be in the federal circuit court except with the trust company.

7. SAME—PREJUDICE TO DEFENDANT.
The court cannot hold that the railway company will suffer no prejudice from the dismissal of the bill merely because the complainant intends to commence a proceeding in quo warranto, when it is not clear that the question at issue can be presented in that proceeding, or that a judgment in the suit in equity would not be a bar to such proceeding.

In Equity. Bill filed in the circuit court of Wayne county, Mich., by the city of Detroit against the Detroit City Railway Company, the Detroit Citizens' Street Railway Company, Sidney D. Miller, and William K. Muir, trustees, and the Washington Trust Company of the City of New York. The Washington Trust Company of the City of New York removed the cause to the federal circuit court, and a motion to remand was denied. 54 Fed. Rep. 1. The complainant now moves to postpone the hearing on bill and answer, or, in the alternative, to dismiss the complaint. Motions denied.

John J. Speed, Charles A. Kent, and Benton Hanchett, for complainant.

Ashby Pond, Frederick A. Baker, John C. Donnelly, Henry M. Duffield, Otto Kirchner, and Henry M. Campbell, for respondents.

Before TAFT, Circuit Judge, and SWAN, District Judge.