larger amount of water than the estimates. Hence I think it would be safe to find that the Berry Roberts ditch appropriated 200 inches of water There is no dispute but that during certain months the Timber ditch and the South Fork ditch took all the water in the Santa Ana river. What was the exact time this occurred cannot be easily determined from the evidence. Some seasons this period was much shorter than others. I find that from about the 15th of June to the 1st of September of each year, as a rule, these ditches took all the water in the river. As I said before, it seems to be admitted by the answers of all the defendants that they did divert this waste water. If the respondents had each set out the amount of water he or it claims, there might have been a determination of the case to show who are the exact parties who diverted the water owned by claimant. As the case stands, the only decree that can be entered is an injunction enjoining all of the defendants from diverting this waste-water right from the 1st of September to the 15th of June of each year. My opinion is that the judgment of the circuit court should be reversed, and the cause remanded, and the circuit court directed to enter a decree according to this view.

This opinion was written with the thought that it might be adopted as the opinion of the court in the case. Finding that the majority of the court do not agree with the conclusions I have reached, I present the same as my individual views, and as a dissenting opinion.

MERRIMAN et al. v. CHICAGO & E. I. R. CO. et al. (two cases).

(Circuit Court of Appeals, Seventh Circuit. November 27, 1894.)

No. 69.

1. APPEALABLE JUDGMENT—FINAL DECREE—WHAT CONSTITUTES.
In an action against a railroad company, one W., and others, for a discovery, to redeem, etc., there was a decree dismissing the bill as to such company, and requiring W. to account for certain bonds. It provided that he was entitled to credit for such sum as might be rightfully due him; and that, it appearing that there was pending in a certain state court a suit in equity in which W. was defendant, touching such bonds, that an accounting had been had in respect to them, and that a special master had made a report, which had not been acted on by such court, execution of the decree should be stayed until final determination of such suit in the state court, or until further order of the court making the decree. *Held*, that the decree, as to W., was interlocutory, and not final, and was not appealable.

2. EQUITY—PLEADING—ORIGINAL BILL—CONSTRUCTION.
A bill by judgment creditors of the D. R. Company against such company, the E. I. R. Company, and others alleged in substance, but in great detail, the execution by the D. R. Company of various invalid mortgages and trust deeds, the void foreclosure and sale of the property, and the possession, under such sale and other illegal proceedings and transactions, of the E. I. R. Company; that the latter company acquired no title to such property; and that it was about to issue to the attorneys, officers, and stockholders of the D. R. Company certain bonds, in consideration of a collusive agreement by them to abandon a contest being made by them for such property, etc. The bill prayed for a discovery and accounting; for an injunction restraining the sale or delivery of such bonds; that all

the property in possession of the E. I. R. Company be decreed to be the property of the D. R. Company, subject only to the right of the former to hold it as mortgagees in possession under an unforeclosed mortgage; that the amount due the mortgagees be ascertained; that plaintiffs be allowed to redeem, and be subrogated to the rights of the mortgagees; and that they have general relief. *Held*, that such bill should be treated as a bill to redeem, and not as a creditors' bill.

8. SAME—MULTIFARIOUSNESS—WHAT CONSTITUTES.
A bill by a judgment creditor of a railroad company, against such company and another railroad company, to redeem property in possession of the latter company as mortgagee, on the ground that such possession was fraudulently acquired, and also to subject to payment of complainant's judgment certain bonds about to be issued by the latter company to the attorneys, officers, and stockholders of the former company, in order to confirm the title to such property, is self-contradictory and multifarious, and cannot be maintained.

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

Two bills heard together,—one by Corydon C. Merriman and others against the Chicago & Eastern Illinois Railroad Company, and the other by the same plaintiffs against the Chicago & Eastern Illinois Railroad Company, Edwin Walker, Joseph E. Young, and the National City Bank of Ottawa, Ill. From the decree, complainants appeal. Affirmed.

The decree from which this appeal was taken was rendered by Mr. Justice Harlan, sitting in the circuit court, on the 18th of June, 1892. It dismissed the original and amended and supplemental bills of complaint as to the appellee the Chicago & Eastern Illinois Railroad Company, hereinafter called the "Eastern Illinois Company," for want of equity, and decreed that the appellees Edwin Walker and Joseph E. Young should account for certain bonds received by them respectively from the Eastern Illinois Company, which were adjudged to have been assets belonging to the Chicago, Danville & Vincennes Railroad Company, hereinafter called the "Danville Company," which the appellants, as judgment creditors of that company, were entitled to have applied in satisfaction of their judgments. The execution of the decree against Walker was stayed until the final determination of a cause pending in the circuit court of Cook county, in the state of Illinois, brought by other parties against Walker and Young, after the commencement of this suit. From this decree two appeals were prayed and allowed. The first is from that part of the decree which dismissed the original, amended, and supplemental bills of complaint as to the Eastern Illinois Company; and the second is from the entire decree. On the hearing of the appeal in this court two errors are pointed out: (1) In staying the execution of the decree as to the appellee Walker; (2) in dismissing the original, amended, and supplemental bills of complaint as to the Eastern Illinois Company.

(1) So far as the appellee Walker is concerned, the decree is as follows: "That the said defendant Edwin Walker, on or about the 6th day of November, 1884, received one hundred and twenty-seven of said bonds, of the par value of one thousand dollars each, together with interest coupons thereon, and that the said defendant Walker should account for the said bonds and coupons so received by him, together with interest thereon. But said Walker is entitled to credit for such sum or sums as may be rightfully due him. It appearing that there is now pending in the circuit court of Cook county, in the state of Illinois, a suit in equity in which one John McNanomy is complainant, and said Walker and Young defendants, touching the said bonds in the decree mentioned, which said suit was commenced prior to the filing herein, on the 14th of December, 1875, of the supplemental bill in lieu of the original bill, and it also appearing that an accounting had been had in said case in respect to said bonds, and that a report thereon has been made

by the special master, which report has not been acted upon, it is therefore ordered that the execution of the foregoing decree, settling the rights of the complainants and the defendant Walker in this suit, be stayed until the final determination of said suit in the state court, or until the further order of this court. The court reserves the right to allow such further proceedings in this case between the complainants and said Walker as may become necessary or proper by reason of the final determination of the case in the state court." The appellee Walker has moved the court to dismiss this appeal, so far as it concerns himself, on the ground that the decree touching himself is interlocutory, and not final.

(2) The appellants concede that the decree dismissing the original, amended, and supplemental bills of complaint as to the Eastern Illinois Company is correct, unless the original bill of complaint was a creditors' bill which created a lien on $500,000 of bonds of the Eastern Illinois Company, which it was about to issue to certain officers, agents, and attorneys of the Danville Company, and which it did issue before the filing of the amended and supplemental bills of complaint.

The original bill of complaint, after stating the parties plaintiff and defendant, and their respective citizenship, and that the complainants had severally recovered judgments against the Danville Company for certain amounts named, and had severally caused executions to be issued on their respective judgments, which executions had been severally returned nulla bona, alleges, in substance:

That the indebtedness merged into said several judgments was all incurred by the Danville Company and existed prior to, and has existed ever since, the year 1873, and that said judgments, since their rendition, have been and still are liens upon the property, or some portion thereof, of the said Danville Company. That the Danville Company was heretofore the owner of a line of railroad extending from Dalton, Cook county, Ill., southerly to Danville, in Vermillion county, a distance of about 108 miles, and a branch line from Bismarck, in said Vermillion county, southeasterly to the east line of the state of Illinois, a distance of 4.5 miles, with right of way, station and other grounds, grading, bridges, culverts, tracks, shops, tools, fixtures, station buildings, structures, fences, and supplies for the use and operation of said road, and terminal tracks, sidings, and switches along said road, and in and near the city of Chicago, and certain lots and leaseholds, rights, and contracts by it acquired for use in connection with said line of railroad, and engines, cars, and machinery and equipments pertaining to said line of railroad, and certain franchises to it belonging, in that regard, together with other property in the state of Illinois; and also a line of road connecting with said lines in the state of Illinois and the state of Indiana to a point near Covington, Ind., with certain franchises and other property connected therewith. That on or about March 10, 1869, the Danville Company executed a purported deed of trust conveying to William R. Fosdick and James D. Fish, defendants herein, as trustees, the road and property of said company in the state of Illinois, extending from its terminus in Chicago to a point on the state line of Indiana, and including all property between said terminal points which said party of the first part "now has or possesses, or may hereafter acquire," and purporting to be its entire property and assets in the state of Illinois, to secure a pretended issue of bonds of said railroad company, of even date with said trust deed, amounting to $2,500,000, payable April 1, 1909, with interest at the rate of 7 per cent. per annum, payable semiannually, as evidenced by certain coupons issued with and attached to said respective bonds. That said trust deed was not acknowledged and recorded as required by the laws of the state of Illinois, and was not a valid conveyance of said property for the purposes therein stated, the property thereby sought to be conveyed being largely personal property thereby left in the possession of the mortgagor, and said mortgage or trust deed not being acknowledged before a justice of the peace in the town where said property or any part thereof was situated, and said personal property was sought to be conveyed contrary to the laws of the state of Illinois. That, as your orators are informed, said bonds to the amount of $2,500,000 were issued, and a large part of them was sold or hypothecated soon thereafter and passed into the possession of holders thereof,