

We are clear that the circuit court erred in sustaining the general demurrer to the bill, and therefore the decree appealed from is reversed, and the cause is remanded, with instructions to overrule the demurrer, and thereafter proceed as equity may require.

JONES v. MANN et al.

(Circuit Court of Appeals, Fourth Circuit. February 14, 1896.)

No. 160.

APPEAL—DISMISSAL—DELAY IN FURNISHING RECORDS AND BRIEFS.

Where the case is docketed and the record filed before the return day, as prescribed by rule 16 of the circuit court of appeals for the Fourth circuit (11 C. C. A. cvi., 47 Fed. vii.), the appeal will not be dismissed, although the appellant so long delayed the filing of the record that it was impossible for him to file and furnish to the opposite parties the printed copies of the record and of his brief within the times prescribed by rules 23 and 24 (11 C. C. A. lii., 48 Fed. iii.).

Appeal from the District Court of the United States for the Eastern District of Virginia.

Alfred P. Thom, for appellant.

Sharp & Hughes and Whitehurst & Hughes, for appellees.

Before GOFF and SIMONTON, Circuit Judges, and PAUL, District Judge.

SIMONTON, Circuit Judge. This is a motion to dismiss the appeal in this case (1) because appellant did not print and file 20 copies of the record 20 days before the beginning of the term; (2) because he did not furnish to the appellees 3 copies of the record 10 days before the term; (3) because he did not file 20 copies of printed brief 10 days before the term. Rule 16 of this court (11 C. C. A. cvi., 47 Fed. viii.) makes it the duty of appellant to docket the case and file a record thereof with the clerk of this court by or before the return day, whether in vacation or in term time. The decree appealed from was filed on December 4, 1895. Appeal allowed, and citation issued 4th January, 1896. The record was filed 22d day of January, 1896, and the return day of the citation was 1st February, 1896. So in this respect the appellant was within the rule. It is true, he might by great diligence have filed the record sooner, but he was not required to do so, and cannot be punished for not doing so. The record having been filed on 22d of January, and printed on the 30th January, it was impossible for appellant to file printed copies with the clerk 20 days before the term, which began 4th February, 1896, as required by rule 23 (11 C. C. A. lii., 48 Fed. iii.), and equally impossible for him to file with the clerk 10 days before the term printed copies of his brief, as required by rule 24, *Id.* But as his inability to do these resulted from the late date at which the record was filed and printed, and as the filing at that date broke no rule of this court, he cannot be punished for not following rules 23 and 24. Circumstances prevented the trial of the case at this term. It is continued, the motion being refused.

GORDAN et al. v. JACKSON.

SAME v. FAVOR.

(Circuit Court, E. D. Arkansas, W. D. February 13, 1896.)

EQUITY—JURISDICTION—ADEQUATE REMEDY AT LAW—SUIT TO REMOVE CLOUD ON TITLE.

A suit in equity, to remove a cloud upon complainant's title to land and exclude defendant from such land, cannot be maintained, in a federal court, when the defendant is in possession of the land and the complainant is not, the remedy at law being adequate and complete; and a local statute, permitting the bringing of such suits in the state courts, does not enlarge the power of the federal courts to entertain the same.

P. C. Dooley, for plaintiffs.

Williams & Bradshaw, for defendants.

WILLIAMS, District Judge. On the 7th day of July, 1891, James G. Gordan and others filed two bills in equity,—one against W. F. Jackson, and the other against J. C. Favor. Although the bills and the cases made upon them present some points of difference, they are so far similar that, in my opinion, they must be controlled by the same principle. They allege that the plaintiffs are the owners in fee of certain lands, described, and set out the manner in which they were acquired; that defendants claim some estate or interest therein adverse to plaintiffs, the exact nature of which is unknown; that such claim is invalid, but is, nevertheless, a cloud on complainants' title; that the suit is brought to determine what interest or estate the defendants have; that defendants have made improvements on the land, and received rents and profits therefrom, which receipts exceed the cost of improvements; and that said claims should be set off. The prayer is that "the title to the land be determined and fully quieted between the parties," that plaintiffs' title be confirmed, and for general relief. On the 2d day of November, A. D. 1891, the defendants filed demurrers to the bills for the reasons, in substance, (1) that it appeared by the bill that complainants were not, but that defendants were, in possession of the lands; (2) that the bill sought to remove a cloud from title, and did not disclose what the cloud was; (3) that the cause of action alleged in the bill was in effect an action of ejectment, and could not be maintained in equity. On the 4th day of January, 1892, the complainants filed amended bills, alleging, in substance, the facts set out in the original bills, and specially praying that each of the defendants "be required to disclose fully any and all title, claims, liens, or incumbrances he may have to said property, and all rents and profits received by him in any form from said land, and that a decree be entered fully settling and determining the question of title and ownership between the parties, and awarding the property to the plaintiffs, and that defendants be excluded from the property and enjoined from asserting any claim or title, that the proper orders be made to carry the decree into effect, and for general relief. On the 5th day of June, 1893, the defendants filed their answers in the several suits, asserting title in themselves,