

CONSOLIDATED TRACTION CO. v. GUARANTORS' LIABILITY & INDEMNITY CO. OF PENNSYLVANIA.

(Circuit Court, D. New Jersey. February 13, 1897.)

REMOVAL OF CAUSES—RIGHT TO SPEED FILING OF RECORD.

After a party has filed his petition and bond in the state court, the opposing party may file a copy of the record in the federal court before the expiration of the time limited for the removing party to do so; and the court may then require the latter to plead. *Arthur's Adm'r's v. Insurance Co.*, Fed. Cas. No. 565, 7 Reporter, 329, followed.

Vredenburgh & Garretson, for plaintiff.
Depue & Parker, for defendant.

KIRKPATRICK, District Judge. This suit was commenced by summons in the supreme court of the state of New Jersey on October 22, 1896. The time for the defendant to plead expired January 1, 1897. On the 30th December, 1896, the defendant filed its petition and bond for the removal of the cause to this court. The time within which the defendant would be obliged to file the record in this court would not expire until the first day of the next term, viz. March 23, 1897. On the 16th January, 1897, the plaintiff filed a copy of the record in this court, and gave notice thereof to the defendant, who, failing to plead, was, by order of this court dated February 2d, required to do so within 15 days thereafter. The motion now is to set aside as improvidently granted this order to plead. While there seems to be a difference of opinion among the judges as to the status of cases removed from state courts between the time of filing the petition and bond in the state court and the first day of the next term of the United States court to which the case has been removed, I find the question determined in this circuit. In *Arthur's Adm'r's v. Insurance Co.*, 7 Reporter, 329, Fed. Cas. No. 565, McKennan, J., says:

"The state court ceases to have jurisdiction upon the proper filing of the petition and bond in cases where the act of congress gives jurisdiction in the cause to the court. The result is that the cause from that time is in theory in this court, and the only question is whether, where the party who has the right neglects to file the copy, to the detriment of the other party, the latter cannot do it for him. I have no doubt that he can."

The rule so laid down has been followed in practice in this circuit, and orders have been granted to speed the cause before the expiration of the time limited to the removing party for filing a copy of the record in this court. The motion will be denied.

BRYAR et al. v. BRYAR.

(Circuit Court, W. D. Pennsylvania. February 5, 1897.)

1. FEDERAL AND STATE COURTS—CONCURRENT SUITS—JUDGMENT IN STATE COURT.

The wife of a bankrupt brought a bill in equity in the United States district court against the bankrupt and his assignee, claiming to be the equitable owner of the undivided one-half of land the legal title to which was in the bankrupt. C., the purchaser of the land at assignee's sale, intervened as defendant. There was a decree in favor of the wife, and an appeal there-

from to the United States circuit court. Pending this appeal the wife brought ejectment in a court of the state (Pennsylvania) against C., upon the same equitable title which was the foundation of her pending bill. The ejectment was tried upon the merits, and resulted in a verdict and judgment against the wife. *Held*, that she and her heirs were thereby concluded in the pending suit in the circuit court.

2. SAME—FOLLOWING STATE DECISIONS—RULE OF PROPERTY.

It being a rule of property in Pennsylvania that, in ejectment upon an equitable title, one verdict and judgment are conclusive of the title, equally binding effect is to be given to such a verdict and judgment in the federal courts.

This was a bill in equity filed by Jane Bryar, in the district court, against James Bryar, a bankrupt, Thomas Campbell, and others, she claiming to be equitable owner of an undivided one-half of certain lands the legal title of which was in the bankrupt. The district court rendered a decree for the complainant, and the opposite parties took an appeal to this court, where the cause has since been pending.

W. B. Rodgers, for appellants.

L. C. Barton, for appellee.

Before ACHESON, Circuit Judge, and BUFFINGTON, District Judge.

ACHESON, Circuit Judge. Pending this appeal, in the year 1880, Jane Bryar brought an action of ejectment in the court of common pleas No. 1, of Allegheny county, Pa., against Thomas Campbell and others, to recover the land here in controversy. That case was tried before a jury, and a verdict rendered in favor of the defendants in the action. Judgment upon the verdict having been entered, Mrs. Bryar sued out a writ of error, and, after argument, the supreme court of Pennsylvania affirmed the judgment of the court of common pleas. 30 Pittsb. Leg. J. 12. In that ejectment Mrs. Bryar set up against Thomas Campbell, as the basis of her right to recover, the same equitable title which was the foundation of her bill in equity in the United States district court, and which her heirs now assert against Campbell in this court. These facts, which have been brought upon the record by proofs and a written stipulation, are decisive, we think, against the heirs of Jane Bryar, the now appellees. Mrs. Bryar elected to have her rights determined in the state courts, and Campbell was compelled to defend in the state forum. Whether or not Campbell could have set up the pendency of the bill here in abatement or in bar of the action in the court of common pleas we need not inquire. It is enough that he did not attempt to do so, and the action proceeded in the state courts upon the merits to final judgment. As an adverse decision there against Campbell would have concluded him, so the decision in his favor concluded Mrs. Bryar and her heirs. The ejectment brought by Mrs. Bryar was upon her equitable title,—a procedure allowable in the courts of Pennsylvania, where an equitable ejectment is the full equivalent of and substitute for a bill in equity,—and it is well settled that in ejectment upon an equitable title one verdict and judgment are conclusive of the title. *Peterman v. Huling*, 31 Pa. St. 432; *Winpenny v. Winpenny*, 92 Pa. St. 440. This being an established rule of property

in Pennsylvania, an equally conclusive effect is to be given to such a verdict and judgment in the courts of the United States. *Miles v. Caldwell*, 2 Wall. 36. A complete defense to this bill is therefore shown, and that defense is available here under the present pleadings, supplemented by the stipulation of counsel.

BUFFINGTON, District Judge, concurs.

PER CURIAM. This cause, having come on for final hearing upon the pleadings, proofs, and a written stipulation, was argued by counsel; and now, February 5, 1897, upon consideration, the decree of the district court is reversed, the costs in that court, however, to be paid by Thomas Campbell; and it is further ordered, adjudged, and decreed that the bill of complaint be, and the same is, dismissed, without costs in this court.

LOUISVILLE, N. A. & C. RY. CO. v. LOUISVILLE TRUST CO. et al.

(Circuit Court, D. Kentucky. February 9, 1897.)

CERTIORARI BY SUPREME COURT TO CIRCUIT COURT OF APPEALS—EFFECT AS TO TRIAL COURT.

The effect of a certiorari, when awarded by the supreme court in a cause decided by the circuit court of appeals, is to suspend any action that might be taken by that court, or by the trial court in obedience to its mandate; but it does not restore jurisdiction to the trial court, nor give such court authority to set aside orders legally and properly made, in obedience to the mandate of the circuit court of appeals, before the writ of certiorari was awarded.

George W. Kretzinger and Pritle & Trabue, for complainant.
St. John Boyle and Swager Sherley, for defendants.

BARR, District Judge. The Louisville, New Albany & Chicago Railway Company obtained a judgment against the Louisville Trust Company and others in this court, which declared that a guaranty which was indorsed upon certain coupon bonds issued by the Richmond, Nicholasville & Beattyville Railway Company by said Louisville, New Albany & Chicago Railroad Company was ultra vires and invalid, and which directed that the guaranty thereon should be canceled, and the injunction which was originally granted, preventing the transfer of said bonds with the guaranty thereon, was made perpetual. From this judgment the Louisville Trust Company and others, holders of said bonds, appealed with supersedeas bonds to the circuit court of appeals, and that court reversed the judgment of this court, holding that the guaranty was invalid as to the appellants, and directed by mandate that the bills filed by the Louisville, New Albany & Chicago Railway Company should be dismissed, with costs. 22 C. C. A. 378, 75 Fed. 433. The mandates of the circuit court of appeals in the several cases were dated October 8, 1896, and filed in this court on November 14, 1896, and on the same day, pursuant to and in obedience to said mandates, on motion of the appellants, an order was entered by this court dismissing the bills, with costs in favor of the several appellants except the Louisville