

# CASES

## ARGUED AND DETERMINED

IN THE

### UNITED STATES CIRCUIT COURTS OF APPEALS AND THE CIRCUIT AND DISTRICT COURTS.

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PULLMAN'S PALACE-CAR CO. v. CENTRAL TRANSP. CO.

(Circuit Court of Appeals, Third Circuit. October 1, 1897.)

No. 37.

#### CONCURRENT APPEALS TO SUPREME COURT AND TO CIRCUIT COURT OF APPEALS.

Where an appeal is taken to the supreme court direct, on the ground that the case involves the construction or application of the constitution of the United States, and an appeal is also taken to the circuit court of appeals, the latter court will stay its hand until the appeal in the supreme court is disposed of, and will not in the meantime certify to the supreme court the question whether it has jurisdiction to hear and determine the cause.

#### Appeal from the Circuit Court of the United States for the Eastern District of Pennsylvania.

This was a bill in equity by the Pullman's Palace-Car Company against the Central Transportation Company. In the circuit court a decree was rendered in favor of the latter company on a cross bill, and the cause referred to a master to ascertain the value of the property in question. 65 Fed. 158. On the coming in of the master's report, the circuit court approved his findings and conclusions of law, and decreed accordingly. 72 Fed. 211. From this decree the Pullman's Palace-Car Company took an appeal to the supreme court under the fifth section of the judiciary act of March 3, 1891, on the ground that the case involved the construction or application of the constitution of the United States; and it subsequently took an appeal to this court also, under the sixth section of that act. Heretofore a motion was made to dismiss this appeal, on the ground that it was void because taken while the appeal to the supreme court was still pending and undetermined, which motion was denied. 76 Fed. 401. The appeal to the supreme court is still undetermined, and a motion is now made that this court certify to the supreme court the question whether this court has jurisdiction to hear and determine the cause.

Joseph H. Choate and Edward S. Isham, for the motion.  
Frank P. Prichard, opposed.

Before SHIRAS, Circuit Justice, and KIRKPATRICK, District Judge.

SHIRAS, Circuit Justice. This is a motion asking us to certify to the supreme court the question whether this court has jurisdiction to hear and determine the cause. Upon a former occasion we felt constrained to refrain from passing on the merits of the case while it was pending on an appeal to that court. 76 Fed. 401. Nor do we now perceive that any useful result would be promoted by granting the present motion. Until the supreme court shall have determined the questions there pending, on the appeal and on the motion to dismiss the appeal, this court thinks it would not be proper to deal with the case on its merits, and it may be that the action of the supreme court may relieve this court from any further duty in the case.

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NORTH BLOOMFIELD GRAVEL MIN. CO. v. UNITED STATES.

(Circuit Court of Appeals, Ninth Circuit. October 28, 1897.)

**CIRCUIT COURT OF APPEALS—JURISDICTION—ORIGINAL ORDERS.**

A circuit court having ordered an injunction to issue, an appeal was taken, and thereupon it directed that the injunction should not issue until further order. Application was then made to the circuit court of appeals for an original order directing the court to vacate this latter order. *Held*, that the appellate court could give no such directions, as its jurisdiction is only appellate, and it can act upon the court below only by mandate.

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

C. W. Cross, for appellant.  
Samuel Knight, Asst. U. S. Atty.

Before GILBERT and MORROW, Circuit Judges, and HAWLEY, District Judge.

GILBERT, Circuit Judge (orally). In the case of North Bloomfield Gravel Mining Company v. U. S., an application was made to this court to direct that the court below vacate an order that had been made suspending the operation of an order of injunction. The lower court, in reaching its conclusion, ordered an injunction to issue. 81 Fed. 243. Upon an appeal being taken, it directed that the injunction should not issue until the further order of the court. On appeal to this court an application is made for an original order. We think we have no jurisdiction to issue an order concerning any matter pending in the court below. That court made an order denying the injunction. An appeal might have been taken to this court from that order. On final hearing of this case the matter can be reviewed, but in the meantime we see no way by which the action of the circuit court can be directed from this court. We can issue no injunction from this court, and can only act on the lower court by a mandate. Our jurisdiction is appellate. The motion will be denied.