

paid interest on \$34,000 of bonds to the mile. The return referred to is made on forms submitted by the commission, and under the item of "operating expenses" only ordinary repairs and replacements are allowed. In case an insufficient wooden bridge is replaced by an adequate iron bridge, that is treated as a betterment, and not permitted to figure in the returns as a part of the operating expenses. The bill and cross bill show that, if such betterments, which can only be made or procured out of the earnings of the road, were allowed in the return of operating expenses, the revenue earned and rendered as net revenue would not have been equal, by several hundred thousand dollars, to the interest on the bonded indebtedness; that the bonded indebtedness outstanding against this road being in excess of the value fixed by the commission, to the extent of more than 50 per cent., the company has no means of providing for such betterments, if not at all allowed to charge them at any time against the gross earnings of the road. More than this, it is shown that the road has never at any time paid any dividend upon its stock. On the whole case, as made in the case of the Houston & Texas Central Railroad Company, it seems clear to me that the system of rates adopted and enforced by the commission does not afford to the owners of this property the equal protection of the law, and takes from the owners and stockholders the property they have therein, without just compensation, and that, therefore, the rates must be held to be unreasonably low, unjust, and confiscatory, and should not be submitted to, and cannot be suffered to be enforced. As already said, the case made for relief in each of the other suits seems to be stronger than the case of the Houston & Texas Central Railroad Company; and the evidence appears to me to show clearly that the system of rates imposed is, as to each of the roads, unreasonably low, unjust, and confiscatory. Therefore the prayer of the bill in each case is granted, to the extent of enjoining the roads from adopting the rates heretofore promulgated by the commission, and enjoining the commission and the attorney general from enforcing the same, and enjoining all persons claiming thereunder from prosecuting the railroads, or any of the officers thereof, for the nonobservance of the system of rates heretofore promulgated by the commission.

BRYAR et al. v. CAMPBELL.

(Circuit Court of Appeals, Third Circuit. December 5, 1898.)

ABATEMENT—DISMISSAL FOR ABANDONMENT—JUDGMENT IN SECOND ACTION.

Pending an appeal in a suit in equity to enforce a conveyance of lands, the commencement by the plaintiff of an action of ejectment against the defendant to recover the same lands, and the rendition of a verdict and judgment therein adverse to the plaintiff, may properly be treated by the appellate court as an abandonment of the equity suit, or as a conclusive adjudication against the plaintiff of the facts on which the case rests, either of which will justify a dismissal of the bill.

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

This was a suit in equity.

L. E. Barton and Edward Campbell, for appellants.

Wm. B. Rodgers, for appellee.

Before DALLAS, Circuit Judge, and BUTLER and KIRKPATRICK, District Judges.

BUTLER, District Judge. In January, 1877, James Bryar was declared a bankrupt; and soon thereafter certain land to which he had title was offered for sale by his assignee. His wife, Jane Bryar, thereupon petitioned the district court for an order to restrain the sale, averring that the property was hers; the deed for the same having been made to her husband by mistake. While the application was pending the assignee sold the land to Campbell. Subsequently (June 29, 1878) Campbell was brought in as a defendant; and later (June, 1879) the petition was amended by inserting a prayer for conveyance of the land by Campbell to the petitioner. Thus the proceeding became substantially a suit between Mrs. Bryar and Campbell, for the property in controversy. Subsequently the court adjudged it to her, and decreed that Campbell convey accordingly. July 16, 1879, the latter appealed to the circuit court. While the appeal was pending the land was sold under a mortgage executed by James Bryar October 2, 1874, and purchased by William Rogers, who conveyed to Campbell. In 1880 Mrs. Bryar brought an action of ejectment against Campbell; and on the trial a verdict was rendered against her, and judgment entered accordingly. January 28, 1896, the plaintiff moved the court to dismiss the appeal (for imperfection) which motion the court refused. With these facts appearing on the record the appeal came to hearing in 1897, and the bill was dismissed. 78 Fed. 657. The refusal to strike off the appeal, and the dismissal of the bill, constitute the errors assigned.

The case is extraordinary; but in any view that can be taken of it, the action of the circuit court (in both respects complained of) must be affirmed. Granting that the district court had jurisdiction to enter the decree (which may well be doubted, to say the least) and that the circuit court had authority to do more than reverse, and dismiss the bill, for want of such jurisdiction, its refusal of the motion, and dismissal of the bill on the merits, must be affirmed; because, first, the suit at law must be treated as an abandonment of the proceeding in equity, and second (if not) the verdict of the jury must be regarded as a conclusive finding of the facts, on which the plaintiff's case rests, against her.

The decree is therefore affirmed.

LONDON & SAN FRANCISCO BANK, Limited, v. CITY OF OAKLAND et al.
(Circuit Court of Appeals, Ninth Circuit. October 3, 1898.)

No. 444.

1. DEDICATION OF STREETS—FILING OF PLAT.

A map or plat of a town signed and acknowledged by the owners of the land, and duly filed and recorded, and by reference to which such owners partitioned the property by deeds between themselves, constitutes