

in the land of which he can avail himself to defeat the operation of the act of congress confirming the Weed entry. Some reliance is placed, in argument, upon the fact that complainant has paid the costs of the contest and certain fees to land-department officials. These payments were made with full knowledge of the fact that they would not affect the right to the land, unless the Weed entry was canceled. The payments were not made with the expectation that, by reason thereof, the land department would convey the title to the complainant, but they were made in aid of the contest which complainant initiated against the Weed entry, and complainant well knew that these payments would not give him any right to enter the land, unless he succeeded in procuring a cancellation of the previous entry made by Weed; and, as he has failed in his effort to procure a cancellation of this entry, he has not established a right to enter the land by the mere payment of the costs and fees. Under the act of May 14, 1880, it is the procurement of a cancellation of a previous entry and the payment of the land-office fees that creates the right to a preference in the entry of the land upon the part of the contestant. A performance of one only of the conditions is not sufficient. Both conditions are essential in the creation of the right. The complainant admits that he has not secured the cancellation of the Weed entry, and therefore has failed to show that he has become entitled to enter the land. He never has entered the same, and therefore has no right in the land. He has not perfected a right to enter the land, having failed to secure a cancellation of the Weed entry, and therefore there is no ground shown upon which the court could base a decree that the defendants hold the legal title for his benefit. The utmost he can claim, in view of the facts recited in the bill, is that, if he had been permitted to prolong the contest over the Weed entry before the land department, he might have succeeded in ultimately procuring a cancellation of the entry; but this court cannot accept, as ground for its action, a possibility of this kind, in view of the requirements of the act of congress that the contestant must succeed in procuring a cancellation of the existing entry before he becomes entitled to create a right in the land by making entry thereof. The demurrer is therefore sustained, and the amended bill is dismissed on the merits at the cost of complainant.

ANDERSON v. CONDUCT et al.

(Circuit Court of Appeals, Seventh Circuit. June 6, 1899.)

No. 538.

RAILROAD FORECLOSURE—SALES SUBJECT TO CLAIMS AGAINST RECEIVER.

Where a decree for the sale of railroad property in a foreclosure suit contains an independent and unconditional provision that the sale shall be subject to all current liabilities of the receiver, the purchaser takes the property subject to such condition, without regard to the question of priority between such liabilities and the liens under which the sale is made.

On Petition for Rehearing.

For former opinion, see 93 Fed. 349.

Alfred H. Gross, for appellant.
Levy Mayer, for appellees.

WOODS, Circuit Judge (concurring in the overruling of the petition for a rehearing). The twenty-eighth paragraph of the decree contains the clause, "and also subject to all current liabilities of the receiver incurred." That is an independent and absolute provision, unqualified by anything that precedes or follows it. What precedes has reference to such claims and allowances as shall be adjudged prior in lien or superior in equity to the receiver's certificates and the mortgage foreclosed, and what follows to obligations assumed or imposed by order of the court which should be adjudged superior in equity to the mortgage. The thirty-first paragraph has no reference to current liabilities incurred by the receiver, but only to claims superior to any of the liens or claims provided to be paid from the proceeds of the sale. In other words, the sale was to be subject unconditionally to the current liabilities of the receiver, without question of essential priority, but, in respect to other claims, "subject to the payment only of the amount allowed upon such of said claims so filed within said 90 days as shall be found entitled to priority over the lien of the trust deed herein foreclosed and which the court may further find should be paid by said purchaser or purchasers." Whether the court erred in preferring current liabilities to the receiver's certificates is a question which does not arise upon this record, and which in no event could be raised by a purchaser under the decree.

ANGLE et al. v. CHICAGO, ST. P., M. & O. RY. CO. et al.

(Circuit Court of Appeals, Seventh Circuit. June 6, 1899.)

No. 501.

RAILROADS—ISSUANCE OF STOCK—TRUSTS.

A holder of railroad stock, issued to him as full paid, in payment of an undisputed claim, takes it free of all trusts created in favor of the railroad company by previous contracts to which he was not a party.

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

B. W. Jones and M. I. Southard, for appellants.
Thomas Wilson, for appellees.

Before WOODS, JENKINS, and GROSSCUP, Circuit Judges.

WOODS, Circuit Judge. For a statement of the averments of the bill in this case reference is made to the opinion of the supreme court on demurrer thereto in *Angle v. Railway Co.*, 151 U. S. 1, 14 Sup. Ct. 240. This appeal is from a final decree on the merits dismissing the bill for want of proof of the alleged conspiracy and fraud. Before the hearing was had which resulted in that decree, another suit, against the Omaha Company and the Portage Com-