

Counsel for Parties.

GLEN *v.* FANT.

ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Submitted January 4, 1888.—Decided January 9, 1888.

A stipulation, made before judgment in the court below, that “in the Supreme Court of the United States this cause shall be submitted to the court without any oral argument, either side, however, having the right to file a printed brief or briefs,” is not a submission under the 20th Rule; and, under such a stipulation, this court will not apply that rule to the case on the suggestion of one of the parties against the protest of the other.

MOTION TO SUBMIT this cause under Rule 20. The motion was founded upon a stipulation entered into between the attorneys for the plaintiff and the defendant in person, in the court below, before trial there, the material clauses in which stipulation were as follows:

“Said cause shall be heard upon the agreed statement of facts hereto annexed as a part hereof. . . . Said cause may be submitted to the court and heard and decided by the court (without any jury) upon said agreed statement of facts and . . . may be certified to the general term of this court . . . and if not so certified an appeal may be taken by any party from the decision or judgment of the Circuit Court to said court in general term, and that in case of such appeal no bond shall be required . . . and that either party to this cause may take an appeal or writ of error from the decision of said court in general term to the Supreme Court of the United States, and that in that event said cause shall be heard and decided in the same manner by the Supreme Court of the United States. . . . That in the Supreme Court of the United States this cause shall be submitted to the court without any oral argument, either side, however, having the right to file a printed brief or briefs in the Supreme Court of the United States.”

Mr. Henry Wise Garnett for the motion.

Counsel for Parties.

Mr. Martin F. Morris, opposing.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This motion is denied. While the stipulation binds the parties to submit the cause without oral argument, there is nothing which requires this to be done at any particular time. Its terms will be fulfilled if the submission is made when the case is reached in its order. As no reference is made to Rule 20, we cannot apply that rule to the case on the suggestion of one of the parties against the protest of the other.

Denied.

NEW ORLEANS PACIFIC RAILWAY COMPANY v.
UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

Submitted January 6, 1888. — Decided January 16, 1888.

Under the provision of the act of July 31, 1876, c. 246, 19 Stat. 121, "that before any land granted to any railroad company by the United States shall be conveyed to such company, or any person entitled thereto under any of the acts incorporating or relating to such company, unless such company is exempted by law from the payment of such cost, there shall first be paid into the Treasury of the United States, the cost of surveying, selecting and conveying the same by the said company or persons in interest," the New Orleans Pacific Railway Company, as the owner, by conveyance from the New Orleans, Baton Rouge and Vicksburg Railroad Company, of its interest in the land grant made to the latter company by § 22 of the act of March 3, 1871, c. 122, 16 Stat. 579, was bound to pay the cost of surveying the land, before receiving a patent for it, although such cost had been incurred and expended by the United States before March 3, 1871, the construction of no part of the road having been commenced before the expiration of the five years limited for the completion of the whole of it.

APPEAL from a judgment against the petitioner in the Court of Claims. The case is stated in the opinion of the court.

Mr. John S. Blair, Mr. John F. Dillon and Mr. Wagner Swayne, for appellant.